

Anti-Trafficking Monitoring Group (ATMG)- Written evidence (MSA0039)

Summary

1. The Anti-Trafficking Monitoring Group (ATMG) is a coalition established in 2009 to monitor the UK's implementation of the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT).

2. ATMG operates according to a human rights-based approach to protect the well-being and best interests of victims of human trafficking. It comprises of seventeen leading UK-based anti-trafficking organisations: Anti-Slavery International, Ashiana Sheffield, Bawso, Children's Law Centre (CLC), East European Resource Centre (EERC), ECPAT UK, Flourish Northern Ireland, Focus on Labour Exploitation (FLEX), Helen Bamber Foundation, Hope for Justice, JustRight Scotland, Kalayaan, Law Centre (NI), Scottish Refugee Council, TARA service, The Snowdrop Project, The UK Committee for UNICEF (UNICEF UK).

3. This submission addresses five of the six terms of reference included in the call for evidence of the House of Lords Select Committee on the Modern Slavery Act 2015:
 - The extent to which the Modern Slavery Act 2015 has been impacted by recent legislation (for example the Nationality and Borders Act 2022 and the Illegal Migration Act 2023)
 - Whether the Act has kept up-to-date with developments in modern slavery and human trafficking, both within the UK and internationally

- The efficacy of the other key provisions of the Act, including definitions, sanctions, reporting, enforcement, and the statutory defence for victims
 - The role of the Independent Anti-Slavery Commissioner, including whether the post is sufficiently resourced, and the process of appointment
 - Suggestions for improvements that could be made to the Act to help it to better achieve its aims
4. The ATMG notes a marked deterioration of the National Referral Mechanism (NRM) system and the broader environment for survivors of trafficking and modern slavery, which is putting them at greater risk of harm and exploitation.
5. The Government's renewed focus on immigration enforcement and the consequent legislative changes brought by the Nationality and Borders Act 2022 and the Illegal Migration Act 2023, raise serious concerns regarding the identification, support and protection of survivors. While the UK Government alleges, without evidence, that there is significant abuse of the NRM system, front-line practitioners are finding the reverse: survivors are finding it increasingly difficult to be identified and get help.
6. The ATMG is particularly concerned about the following developments affecting the Modern Slavery Act 2015:
- De-prioritisation of modern slavery over immigration enforcement based on hostile rhetoric and “abuse of the system” claims, which are affecting the Modern Slavery capacity to prioritise survivor’s support over their

immigration status or criminal justice involvement (see paragraph on public order disqualification in section 1.2a and 1.5a);

- Significant changes to the Modern Slavery Act and its Statutory guidance under section 49, following the commencement of the Nationality and Borders Act 2022, which are preventing/delaying survivors' from accessing the National Referral Mechanism and therefore from receiving timely support and protection (see section 1);
- The introduction of the Illegal Migration Act 2023, which will further dismantle identification, support and protection systems for survivors, actively empowering traffickers and pushing survivors underground (see section 1.3);
- Lack of a cross-departmental modern slavery strategy, which is resulting in the UK's weak and fragmented response to modern slavery and human trafficking (see section 2.1);
- Lack of meaningful consultation with survivors and civil society when drafting new legislation and statutory guidance, resulting in ineffective and harmful policies for survivors.

1. The extent to which the Modern Slavery Act 2015 has been impacted by recent legislation (for example the Nationality and Borders Act 2022 and the Illegal Migration Act 2023)

1.1 Background

7. Over the past few years, there has been a significant roll back from the relative progress made with the Modern slavery Act and a

deterioration of the National Referral Mechanism (NRM) system and the broader environment for survivors of trafficking and modern slavery in the United Kingdom (UK), putting them at greater risk of harm and exploitation.¹ While the UK Government alleges, without evidence,² that there is significant abuse of the NRM system, front-line practitioners are finding the reverse: survivors are finding it increasingly difficult to be identified and get help.

8. Survivors' safety, recovery and integration has been undermined by the Government and media's anti-migrant rhetoric and "abuse of the system" claims, which have led to the introduction of two significant pieces of legislation - the Nationality and Border Act ("NABA") 2022 and the Illegal Migration Act ("IMA") 2023. These, wrongly and dangerously, conflate modern slavery with immigration enforcement.
9. The recent Home Affairs Committee report following their inquiry into human trafficking expressed deep concerns in relation to the UK Government's de-prioritisation of human trafficking in favor of a focus on irregular migration.³

¹ See:

- OHCHR, (March 2022), 'UN Rights Chief urges revisions to UK borders bill'. Available at: <https://www.ohchr.org/en/press-releases/2022/03/un-rights-chief-urges-revisions-uk-borders-bill>;
- Special Rapporteur on violence against women, its causes and consequences, Special Rapporteur on the human rights of migrants, and Special Rapporteur on trafficking in persons, especially women and children, (February 2022), 'Nationality and Border Bill – We urge the UK to take the right decision'. Available at: <https://www.ohchr.org/en/press-releases/2022/02/nationality-and-border-bill-we-urge-uk-take-right-decision>;
- Communications from UN Special Procedures [GBR 3/2022](#), (February 2022), "Concerns about the Nationality and Borders Bill and, specifically, the recently introduced Clause 9 on notice of decision to deprive a person of citizenship" and [GBR 11/2021](#): "Concerns in relation to the impact of the Nationality and Borders Bill on the human rights of victims of trafficking, and the State's obligations under international law to prevent trafficking in persons, and to assist and protect all victims of trafficking, without discrimination."

² The Director General for Statistics at the Office for Statistics Regulation sent a reprimand letter to the Home Office expressing concerns around the Home Office claims that people are "gaming" the modern slavery system. They reported that they don't have any evidence to confirm these claims. Office for Statistics Regulator, (2022), *Letter to Home Office: Use of National Referral Mechanism statistics*. Available at: https://osr.statisticsauthority.gov.uk/wp-content/uploads/2022/12/Ed_Humpherson_Jennifer_Rubin_National_Referral_Mechanism_statistics.pdf

³ House of Commons, (8 December 2023), *Human Trafficking. First Report of session 2023-2024*. Available at:

10. This is evidenced by the significant changes brought to the modern slavery statutory guidance pertaining to the identification and support system for survivors. The Modern Slavery statutory guidance for England and Wales and non-statutory guidance for Scotland and Northern Ireland⁴ is the instrument used by the Secretary of State to bring into force provisions aimed at the identification and support of survivors of modern slavery as prescribed by section 49 of the Act.
11. These changes have raised the evidential threshold for referral into the NRM, increased the decision-making timeframe, introduced a public order disqualification and bad faith provisions, weakened child safeguarding and support, reduced the numbers receiving meaningful leave to remain, and further led the legal aid and first responder systems to breaking point. We will analyse some of these changes over the course of this submission.
12. We are also concerned about the little to no scrutiny and the speed at which the new pieces of legislation were introduced and passed through Parliament. Just over a month after the commencement of Part 5 of the Nationality and Borders Act,⁵ the Illegal Migration Bill was introduced in Parliament.⁶

<https://committees.parliament.uk/publications/42482/documents/211207/default/>

⁴ Home Office, (last updated 22nd February 2024), *Modern Slavery: statutory guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and non-statutory guidance for Scotland and Northern Ireland*. Available at: <https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims/modern-slavery-statutory-guidance-for-england-and-wales-under-s49-of-the-modern-slavery-act-2015-and-non-statutory-guidance-for-scotland-and-northern-ireland#:~:text=This%20guidance%20is%20aimed%20at,a%20potential%20victim%20is%20identified.>

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

⁶ The Illegal Migration Bill was introduced in Parliament on the 7th of March 2023 and received Royal Assent, becoming an Act of Law on the 20th of July 2023

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

1.2 The Impact of the Nationality and Borders Act 2022

14. The Modern Slavery Act, especially part 5 and section 49 with the corresponding statutory guidance, was designed in part to increase the efficacy of identification of slavery in the UK. For instance, by defining human trafficking, forced labour and laying out the scheduled offenses, as well as making provision for the publishing of guidance laying out how to best identify and support survivors of slavery.

15. However, the system for identifying victims of slavery is now in crisis. An increasing number of survivors are being locked out of identification and support because of changes to the NRM statutory guidance introduced by the Nationality and Border Act (NABA) 2022.

16. The latest NRM statistics covering 2023, report the highest number of NRM referrals ever with 17,004 potential survivors referred to the NRM, however the significant increase in referrals we saw year on year appears to have slowed down as this number is consistent with referrals submitted in 2022. At the same time, also the Duty to Notify referrals were at their highest with 4,929 reports in 2023.⁷

17. NABA transformed the NRM into a gate keeping system, eroding its ability to be an effective identification and support framework for survivors. The conflation between modern slavery and immigration enforcement, led to a de-prioritisation of the support and identification

⁷ Home Office, (7 March 2024), *Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2023*. Available at: [Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/121421/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2023)

for survivors in favor of demonstrating an unevidenced 'abuse of the system'- however, one year since the introduction of the bad faith policy, there hasn't been any disqualification made on these grounds.

18. New legislation compounded by hostile rhetoric supported by the Government's aligned media is leading to the criminalisation of survivors, pushing them further underground by failing to offer a valid alternative to exploitation.

19. We are particularly concerned about the following changes to the Statutory Guidance:

- New evidential threshold based on 'objective evidence' rather than the previous 'suspect but cannot prove' burden of proof;
- Disqualification on public order grounds and bad faith;
- Changes to the definition of victim of slavery and human trafficking;
- Reduced reflection period from 45 to 30 days;
- Reduced timeframe for organisations to provide supporting evidence to inform a Conclusive Ground Decision to 2 weeks;
- Added prioritisation criteria for Conclusive Grounds decision, including prioritisation of Foreign National offenders and Albanian nationals' cases;
- Narrowing of criteria for a grant of leave to remain ("VTS leave")
- The timeframe to submit a reconsideration of a Reasonable grounds or Conclusive grounds decision has been reduced to one month from receipt of negative decision and

introduction of a *Good reason test* to determine acceptance of reconsideration request.

20. Over the course of this submission, we will analyse the impact of some of these changes. The ATMG is currently working with the British Institute for International & Comparative Law (BIICL) and the Human Trafficking Foundation to investigate the impact of NABA on survivors and frontline organisations.⁸ The report, which will be published towards the end of March will provide a more comprehensive analysis.

1.2a Increased number of survivors locked out of identification and support

Reasonable Ground threshold

21. The Home Office NRM quarterly statistics for 2023 clearly show how the identification system has been negatively impacted by the provisions brought by NABA, particularly sections 58 to 69 included in Part 5, which are leaving many survivors outside of the NRM identification and support system.
22. Prior to the introduction of NABA, data from the NRM end of year summary 2022, highlights that “The proportion of positive reasonable grounds decisions was 87% for adults and 90% for children potential victims. The proportion of positive decisions has remained relatively similar in recent years, with around 9 out of every 10 referrals receiving a positive decision.” Overall, the number of positive conclusive grounds decisions were detailed in the report as 88% positive reasonable grounds decisions and 89% positive conclusive grounds decisions.⁹

⁸ British Institute for International and Comparative Law, *Modern Slavery Impact of the Nationality and Borders Act*. Available at: <https://www.biicl.org/projects/modern-slavery-impact-of-the-nationality-and-borders-act>

⁹ Home Office, (2 March 2023), *Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2022*. Available at: <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2022/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2022>

23. However, data published by the Home Office shows a stark decrease in positive Reasonable Ground Decisions compared to 2022 with only 55% positive RG decisions in 2023. Quarter 2 saw the most remarkable drop in positive reasonable ground decisions,¹⁰ with a marked difference between Single Competent Authorities - of the 886 decisions issued by the IECA, only 6% (54) received a positive Reasonable Grounds decision.¹¹
24. Additionally, these changes have also created a two-tier decision-making outcome, raising concerns around discrimination affecting specific cohorts of survivors. Analysis of NRM data has highlighted significant differences in the proportion of positive Reasonable Grounds decisions for UK nationals and foreign nationals for decisions that were made in the first 6 months of 2023. During this period, 86% of Reasonable Grounds decisions for UK nationals were positive compared to 40% for foreign nationals. The proportion of positive decisions for UK nationals increased in quarter 2, 2023 compared to quarter 1, 2023, rising from 84% to 88%. In contrast, the proportion of positive decisions for Albanians fell from 42% in quarter 1, 2023 to 14% in quarter 2, 2023.¹²
25. This impact has particularly affected survivors in detention, who are more likely to get a negative decision because of lack of access to the evidence now required. In recent years there has been a

¹⁰ Home Office, (7 March 2024), *National Referral Mechanism statistics*. Available at: <https://www.gov.uk/government/collections/national-referral-mechanism-statistics>

¹¹ Home Office, (10 August 2023), *National referral mechanism and duty to notify statistics, Quarter 2 2023 - April to June*. Available at: <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-april-to-june-2023/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-2-2023-april-to-june#:~:text=From%20April%20to%2>

¹² IOM UK, (October 2023), *UK data National Referral Mechanism. Data analysis briefing #7*. Available at: https://unitedkingdom.iom.int/sites/g/files/tmzbd11381/files/documents/2023-10/iom_uk_nrm-briefing_2023_midterm.pdf

significant increase in the number of survivors of trafficking who are being held in immigration detention.

26. This followed the 2021 policy change, which led to survivors of trafficking being included in the Adults at Risk Policy¹³ and in turn allowed for their continued detention unless scientific levels of evidence were provided that continued detention would cause them harm. There is a wealth of research¹⁴ and evidence that shows that immigration detention increases the risk of re-traumatisation and has a negative long-term impact on people's physical and mental health. This in turn leads to an increased risk of re-trafficking or further exploitation.

27. While there is a real problem of survivors of trafficking who have been formally identified being detained, there are considerable concerns that the increased use of detention is leading to less survivors being identified because the detention setting is counterintuitive to them being able to disclose their experiences. It is a traumatic setting, which is often a reminder of experiences of trafficking and survivors are expected to disclose their experiences to a Home Office official, who is also seen as the person responsible for their continued detention.

28. The 'Abuse by the system: Survivors of Trafficking in Immigration Detention' report¹⁵ details concerns surrounding

¹³ Home Office, (20 April 2023), *Adult at risk in immigration detention*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1152054/Adults_at_risk_in_immigration_detention_GOV.pdf

¹⁴ Helen Bamber Foundation, (7 September 2022), *The Impact of Immigration detention on mental health*. Available at: <https://www.helenbamber.org/resources/reportsbriefings/impact-immigration-detention-mental-health-research-summary>

¹⁵ Helen Bamber Foundation, ATLEU, FLEX, Medical Justice, (4 October 2022), *Abuse by the system: Survivors of trafficking in immigration detention*. Available at: <https://www.helenbamber.org/resources/reportsbriefings/abuse-system-survivors-trafficking-immigration-detention>

identification of survivors in detention, particularly surrounding the flawed safeguarding systems. It also makes a number of practical recommendations and calls for an urgent and comprehensive review of the process for detaining and continuing to detain confirmed or possible victims of trafficking.

29. Following a Court challenge,¹⁶ the Home Office brought changes to ease the evidential threshold, however the latest statistics published for the year 2023, continue to show a much lower rate of positive RGDs compared to last year. It appears that the competent authorities are continuing to apply a high threshold and are expecting survivors to provide objective evidence at this initial stage. Individuals with negative reasonable grounds decisions are at risk of disengaging from services and can become vulnerable to re-trafficking without support provided through the Modern Slavery Victim Care Contract (MSVCC) or other alternatives.
30. The above evidence shows that recent legislative and policy changes are weakening the NRM, leading to failures in identification, support and protection of survivors of modern slavery.

Reconsiderations

31. NRM statistics for the year 2023 report a spike in reconsideration requests (888 at both RG and CG stage), of which 60% received a positive decision. This shows poor quality decision-making at the initial stage, but also raises concerns in relation to the large number of survivors who did not seek a reconsideration request but would get a positive decision if they did and they were nonetheless excluded from identification and support.

¹⁶ Matrix Chambers, (27 June 2023), *SSHD withdraws new evidential test for 'Reasonable Grounds' decisions in modern slavery statutory guidance*. Available at: <https://www.matrixlaw.co.uk/news/sshd-withdraws-new-evidential-test-for-reasonable-grounds-decisions-in-modern-slavery-statutory-guidance/>

32. In March 2023, the Statutory Guidance was updated limiting the timeframe to submit a reconsideration request to one month from receipt of a negative decision. This is extremely concerning because it will put additional pressure on already strained first responders and legal aid organisations, which will now have to gather evidence within a very short timeframe or provide strong evidence of why they could not comply with the prescribed one month.
33. This short timeframe will also prevent organisations from completing high-quality submissions, which may result in further negative decisions, preventing a further reconsideration to be made. This also puts first responders and solicitors in a difficult situation by preventing them from following a human-rights and trauma informed approach.
34. The Modern Slavery Statutory guidance acknowledges the negative impact of trauma on survivors both in the recollection and disclosure of events. It can take several months, sometimes years, for survivors to disclose their experiences. Imposing a time limit on reconsiderations, it is not just against the principles enshrined in the statutory guidance, but it will also prevent survivors from accessing the NRM, putting them in a vulnerable position and liable to be re-trafficked or exploited.

Disqualification on Public order Grounds

35. The Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT) makes provisions for the non-punishment principle at Article 26. This principle provides for the protection of survivors who were forced to commit a crime as part of their trafficking experience.

36. One of the ways in which the non-punishment principle is applied in the UK is through section 45 of the Modern Slavery Act, which introduces the possibility of raising a defence depending on the type of offence committed. We will analyse this further in one of the below sections.
37. Despite the acknowledgment of the non-punishment principle in international and domestic legislation, section 63 of NABA introduced the public order disqualification. As a result of the public order disqualification policy, survivors have been excluded from the identification and support system, which casts a wide net in terms of those who can potentially be disqualified from identification and protection on the grounds of “public order” or “bad faith.”
38. Between the commencement of NABA on the 30th of January 2023 and the end of December 2023, both Competent Authorities made 331 disqualifications following 443 requests for disqualification on public order grounds. The IOM’s analysis of the first 6 months of 2023 notes that 71% of people disqualified from protection under the National Referral Mechanism because they were a ‘threat to public order’ were referred into the NRM as a potential victim of criminal exploitation.¹⁷
39. In January 2024, following a legal challenge, the Government settled and agreed to withdraw the old public order disqualification policy and introduced a risk of re-trafficking assessment which is to be used before disqualifying someone from the NRM.¹⁸ As this change is quite recent, it is not possible to ascertain its impact yet.

¹⁷ Ibid., p.5, note 12

¹⁸ Matrix Chambers, (22 January 2024), *Secretary of State for the Home Department withdraws public order disqualification policy*. Available at: <https://www.matrixlaw.co.uk/news/secretary-of-state-for-the-home-department-withdraws-public-order-disqualification-policy/>

40. This policy is a positive step towards reintroducing important safeguards for survivors, however significant concerns remain in relation to survivors in detention. The new guidance states that if a potential victim of trafficking is *held in secure accommodation, it will normally be assumed there are no immediate re-trafficking risks present and no further mitigation necessary*.¹⁹
41. In this context, the Home Office clarifies that a prison or immigration detention are examples of secure accommodation. Therefore, the statutory guidance makes a dangerous assumption that if a survivor is set to remain in one of those settings following their disqualification, this is a satisfactory way of preventing their re-trafficking.
42. This is extremely concerning if we look at the increasing number of survivors in detention. A recent Freedom of Information request, shows that in 2022, at least 2,516 people were referred into the NRM from detention,²⁰ which shows an increase from 1,611 in 2021 and 501 in 2017.²¹
43. Therefore, if the safeguards introduced by the new public order disqualification policy are not appropriately applied to survivors in detention, not only will the system fail a vast number of survivors but will also create a discriminatory process where survivors who are in detention, either because of crimes committed as part of their exploitation or because of immigration issues, will be discriminated over other cohorts of survivors. This violates survivors' rights and

¹⁹ Modern Slavery Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland. Paragraph 14.276, p.183-184

²⁰ Helen Bamber Foundation, (15 August 2023), *Leave in limbo: Survivors of Trafficking with uncertain immigration status*. Available at: https://www.helenbamber.org/sites/default/files/2023-08/Leave%20in%20limbo_Final_Aug23.pdf

²¹ *Ibid.*, p.7, note 15

routes to recovery, the non-punishment principle, and other provisions and principles in international law.

Increase in decision-making delays

44. The policy changes brought by NABA increased the backlog and decision-making timeframes both at the Reasonable and Conclusive Grounds stage. The increased Reasonable Grounds threshold led to significant increases in how long it takes for these decisions to be made, which has ultimately resulted in delayed access to support and assistance with a potential heightened risk of re-trafficking or further abuse and exploitation.
45. Before Quarter 2 2023 the median waiting for a Reasonable Grounds decision was never more than 6 days, in line with the statutory guidance expectation that Competent Authorities will make a Reasonable Ground decision within 5 working days of the NRM referral being received.
46. However, in Quarter 2 2023 the median days taken to reach a decision was 21 days. 18% of people referred to the NRM in the first 6 months of 2023 were still waiting for a Reasonable Grounds decision on the 13th of July 2023.²² The median waiting time for a Reasonable Grounds decision made in quarter 3, 2023 was 47 days, which was longer than the 30-day minimum recovery period for survivors to access the NRM.²³
47. This delay affects people's access to support, especially in England and Wales, where survivors are not entitled to access legal aid pre-Reasonable Grounds decision and they also have limited access to support under the MSVCC contract.

²² Ibid., p.5, note 12

²³ Ibid., p.4, note 7

48. Survivors, who are entitled to other types of support such as asylum accommodation or Local Authority housing would usually be signposted there and may not have access to support from the MSVCC outreach service until receiving a Reasonable Grounds decision. This heightens their risk of becoming destitute and homeless as well as more vulnerable to exploitation and re trafficking.
49. Despite the availability of pre-NRM support in Scotland, organisations are increasingly concerned about the wait for Reasonable Grounds decisions. TARA reported that the average wait for their service users between 01/04/2023 and 30/11/2023 was 45 days. TARA can provide support during this period, but NRM financial support is impacted by the delays, which makes it challenging for them to manage.
50. An increased backlog has also been reported at Conclusive Ground Stage. The average (median) waiting time for Conclusive Grounds decisions made in 2022 was 543 days, with stark disparities between men and women.²⁴ Analysis of NRM data also shows significant variations between how long different nationalities wait for a Conclusive Grounds decision.
51. For example, the median waiting time for Conclusive Grounds decisions made in Q1, 2022 for UK nationals was 362 days compared to 662 days for non-UK nationals.²⁵ For the year 2023 the average median waiting time was 526 days.²⁶ Therefore, we continue to see a consistent high backlog, which is hindering survivors' capacity to recover and move on with their lives. This is exacerbated by the fact

²⁴ In 2022, the average (median) waiting time for women to receive a decision was 1,066 days compared to 448 days for men

²⁵ IOM UK, (10 January 2023), *UK Data National Referral Mechanism. Data analysis briefing, Quarter 1 2022.*

Available at:

https://unitedkingdom.iom.int/sites/g/files/tmzbdl1381/files/documents/IOM_UK_NRM_Briefing_Q1_2022.pdf

²⁶ *Ibid.*, p.5, note 12

that many survivors are unable to work while going through the NRM process, putting them at further risk of exploitation and re-trafficking.

1.2b First Responders' system at breaking point

52. The introduction of NABA has exacerbated an already difficult situation for First Responders, resulting in survivors left in a state of limbo for prolonged periods of time, while trying to find an available First Responder to submit an NRM referral. This situation leaves survivors open to further exploitation and vulnerable to a hindrance in recovery.
53. The latest changes to the statutory guidance amending the reconsideration process sparks further concerns around the pressure for first responders and solicitors, who will now have only one month from receipt of negative decision to lodge a reconsideration request. Furthermore, considering the amount of time it takes to gather additional information and issues with accessing legal aid solicitors, many organisations will be forced to request an extension, which will involve providing evidence for this request, creating further pressure on their service.
54. The capacity issues affect mainly non-statutory organisations due to the reliance on their existing funding and resources to carry out their First Responder duty. The Home Office doesn't provide funding to cover the role of First Responders. It is well evidenced that third sector First Responders provide an invaluable service to survivors who may not be willing to access statutory organisations for support due to fear of authorities and threats made by traffickers and exploiters.
55. Non-statutory First Responders, especially, have had to close referrals over the past year as they were unable to cope with the demand, meaning that some survivors were left waiting for months

before an NRM referral could be completed. Consequently, this also meant delays in accessing support and legal advice.²⁷

56. Kalayaan has been raising this issue for over a year and has recently published a new report stating that the same issue persists, and authorities have not taken any actions to tackle it.²⁸

57. Statutory First Responders have also raised concerns around the confusion with multiple versions of the guidance and changes to the NRM online referral form as well as unclear decision-making process.

Case study 1

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

C called Non-Statutory First Responder 2. C asked for an interpreter, but they were unable to find one in

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

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

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

²⁷ Kalayaan, (February 2023), *The National Referral Mechanism: Near Breaking Point*. Available at: <http://www.kalayaan.org.uk/campaign-posts/report-launch-the-national-referral-mechanism-near-breaking-point/>

²⁸ See:

- Kalayaan, (22 February 2024), *The National Referral Mechanism - Near breaking point - Progress Report 2024 - One year on*. Available at: <http://www.kalayaan.org.uk/campaign-posts/the-national-referral-mechanism-near-breaking-point-progress-report-2024-one-year-on/>
- Kalayaan, (21 February 2023), *The National Referral Mechanism: Near Breaking Point*. Available at: <http://www.kalayaan.org.uk/campaign-posts/report-launch-the-national-referral-mechanism-near-breaking-point/>

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

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

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

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

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

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

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

Case study provided by Kalayaan

1.3 Illegal Migration Act 2023

58. The Illegal Migration Act 2023 received royal assent on the 20th of July 2023, despite concerns raised by domestic and international experts on the detrimental impact on survivors.

59. Section 29 of the IMA significantly widens the scope of public order provision including those who have a (present or past) offence with any sentence requiring imprisonment of 12+ months. It includes a reference to a person who is sentenced to detention, or ordered or directed to be detained, which could include immigration detention, detention in a healthcare facility e.g. due to mental capacity or detention in a young offender's institution.²⁹
60. The IMA will result in the criminalisation of foreign nationals' survivors by providing for their disqualification from support and full identification process, followed by detention and removal because of the way they have entered the UK, putting them at further risk of re-trafficking and exploitation. This legislation gives survivors the option of staying detained in a situation of exploitation or being detained by the state which effectively leaves them with no choices at all.
61. This provision is a clear breach of the non-punishment principle (Article 26 ECAT) and Articles 4 (Prohibition of slavery) and 15 (Derogation in time of emergency) of the European Convention on Human Rights, which are non-derogable rights. The protection from removal linked to the 'Reflection and Recovery' period, as well as the requirement to provide support all fall within the scope of Article 4 of the ECHR. No exceptions can be made to these requirements because Article 4 is absolute and non-derogable under Article 15 of ECHR as held by the European Court of Human Rights in *CN v. the United Kingdom*.³⁰

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

³⁰ European Court of Human Rights, (13 November 2012), *CN v. United Kingdom*. Available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-114518%22%5D%7D> – paragraph 65

62. It also implies that because a person has been convicted of one crime, they cannot be identified as a victim of another, which sets a dangerous precedent and could have wide reaching implications.
63. The potential long-term implication of the IMA is also the diminishing ability to be able to record modern slavery data accurately. The legislation will decrease survivors' incentive to come forward and disclose their exploitation to the authorities, meaning many survivors will go underground.
64. The Government as well as frontline organisation supporting survivors rely on data to justify the allocation of resources, and if the data shows that there are less and less modern slavery survivors that require support (because less survivors are coming forward), they will have insufficient reason to allocate financial and other resources to identify and support survivors of modern slavery.
65. This will create a perpetual cycle of survivors not coming forward due to fear of deportation or detention, leading to less survivors being identified, leading to less resources being allocated to train First Responders to identify survivors and other support services. Invariably, this will also impact on intelligence provided to the police and the ability of survivors to engage with criminal justice processes leading to even fewer prosecutions.
66. Furthermore, the Illegal Migration Act may lead to people who arrived in the UK via irregular means and therefore inadmissible for asylum being left in perpetual limbo as the UK does not have the agreements in place for removal to third countries. They will be left without appropriate support in either detention or other inappropriate accommodation. This limbo, and the knowledge they will not be able to regularise their immigration status in the UK, may mean this cohort go

'underground' and are therefore at increased risk of becoming survivors of human trafficking within the UK.

67. In April 2022, the UK Government signed a Migration Partnership which would allow the UK to remove those seeking asylum to Rwanda for processing their claim.³¹ There is anecdotal evidence of people seeking asylum leaving Home Office run hotels when the Rwanda agreement was announced and disengaging with services due to fear of removal and leaving them vulnerable to exploitation. Rather than following duties to prevent human trafficking, this suggests the UK government's policies are in fact increasing the risk of human trafficking.
68. In November 2023, the Supreme Court ruled the plan to remove those seeking asylum to Rwanda unlawful, in part because it does not consider Rwanda a safe country to remove refugees to and breaches of the non-refoulement principle.³² In December 2023, however, the UK Government introduced the Safety of Rwanda (Asylum and Immigration) Bill, which is currently being scrutinised in Parliament and signed a new treaty with Rwanda.
69. If arrangements with countries such as Rwanda are realised, there is a huge risk of vulnerable cohorts arriving in a country where they do not speak the language, have no support network or income opportunities and are met by traffickers seeking to take advantage of this.

1.4 Short-terms and restrictive visas

³¹ Prime Minister's Office, (14 April 2022), '*PM speech on Action to tackle illegal migration: 14 April 2022*'. Available at: <https://www.gov.uk/government/speeches/pm-speech-on-action-to-tackle-illegal-migration-14-april-2022>

³² *R (on the application of ASM (Iraq)) v Secretary of State for the Home Department [2023] UKSC 42*. Available at: <https://caselaw.nationalarchives.gov.uk/uksc/2023/42>

70. The Modern Slavery Act makes provisions for all forms of slavery, including compulsory and forced labour.
71. Recent changes to immigration policies have also been affecting the effectiveness of the Modern Slavery Act to identify and protect survivors. The over-reliance on short-term and restrictive visas are leading to vast numbers falling into exploitation. A combination of discriminatory policy and practice such as visa restrictions,³³ inordinately high visa costs, and various barriers for migrants to access their rights, can result in workers being more dependent on their jobs to pay off debts and therefore being less able to oppose poor treatment.
72. Section 53 in Part 5 of the Modern Slavery Act related to Overseas Domestic Workers Visas prioritises immigration over safeguarding and protection of survivors. While the Act states that immigration rules should make provisions for overseas domestic workers recognised as victims of trafficking to be granted leave to remain, it shifts the responsibility to define those criteria to an immigration enforcement body.
73. For example, reports of the exploitation of overseas domestic workers increased dramatically after 2012 when a policy was enacted that prevented workers from changing employers or renewing their visas once in-country, causing the power balance between migrant employee and employer to become even more pronounced.³⁴

³³ Some of the conditions attached to people's visas, for example a time limit on the length of stay and a No Recourse to Public Funds (NRPF) condition, mean that the individual won't be able to access State support such as claiming most benefits, tax credits or housing assistance.

³⁴ By way of an illustration, data collected for Kalayaan's 2017-2018 Annual Report (<http://www.kalayaan.org.uk/wp-content/uploads/2019/07/Annual-report-17-18.pdf>) shows that the number of reported instances of abuse was significantly lower for those on pre-2012 visas.

74. The Overseas Domestic Worker Visa allows changing to another full-time job as a domestic worker in a private household, however, it imposes certain restrictions on the visa. This includes the lack of a provision which allows one to apply to extend the visa beyond its initial six month duration (without a positive Conclusive Grounds NRM decision) despite ongoing employment.³⁵
75. Similarly, there have been increasing reports of severe forms of labour exploitation in the UK care sector that constitute discrimination and place people in positions of extreme vulnerability to modern forms of slavery. Issues include illegal fees, exorbitant repayment clauses, non-payment of wages, debt bondage – a form of contemporary slavery – and excessive overtime.³⁶
76. For example, using data collected through the Modern Slavery & Exploitation Helpline, the charity Unseen has reported a 606% increase in the number of modern slavery cases in the care sector from 2021 and 2022.³⁷ This power disparity creates a barrier to workers reporting concerns about labour exploitation or other bad practice.³⁸
77. The above issues are compounded by a fragmented and weak labour market enforcement. The Modern Slavery Act at section 55 makes provision for the creation of a Gangmaster Licensing Authority and the publishing of a paper defining their role. This resulted in the

³⁵ Anti-Slavery International, FLEX, Kalayaan, Kanlungan Filipino Consortium, and the Voice of Domestic Workers, (2022), *Joint Submission for The Universal Periodic Review of The UK*. Available at:

<https://www.antislavery.org/reports/joint-submission-for-the-universal-periodic-review-of-the-uk-migrant-domestic-workers/>

³⁶ FLEX et al.,(December 2023), *Joint Position Paper on Preventing Exploitation in the Adult Social Care Sector* . Available at: <https://labourexploitation.org/publications/joint-position-paper-on-preventing-exploitation-in-the-adult-social-care-sector/>.

³⁷ Unseen, (2023), *Who Cares? A review of reports of exploitation in the care sector*. Available at: <https://www.unseen.org/wp-content/uploads/2023/11/unseen-Care-Sector-report-2023.pdf>, p. 4.

³⁸ Ibid., p.16, note 28

creation of the Gangmaster and Labour Abuse Authority, whose authority and resources are insufficient to appropriately address and respond to issues in the labour market.

1.5 Other relevant changes

1.5a Introduction of the Immigration Enforcement Authority

78. On the 8th of November 2021, the Government announced the creation of the Immigration Enforcement Competent Authority, which would deal with a specific cohort of adult cases, including all foreign national offenders and those detained in immigration removal centres.
79. The Government justified the creation of the IECA with the need to streamline decision-making and to ensure, wherever possible, that the various factors which may be pertinent to decisions about an individual are taken by those who can consider their circumstances most in full.³⁹
80. Serious concerns in relation to the creation of the IECA were raised by multiple organisations and experts in the modern slavery sector highlighting how a hostile immigration environment negatively influences identification efforts by preventing disclosure or affecting decision makers' considerations.⁴⁰

³⁹ UK Parliament, (4 January 2022), *Immigration Enforcement Competent Authority. Question for Home Office. UIN 96934, tabled on 4 January 2022*. Available at: <https://questions-statements.parliament.uk/written-questions/detail/2022-01-04/96934/>

⁴⁰ See:

- The Detention Taskforce, (November 2021), *Bad decisions: the creation of an Immigration Enforcement Competent Authority will undermine identifying and protecting victims of crime*. Available at: [https://www.helenbamber.org/sites/default/files/2021-12/Detention%20Taskforce_%20Response%20to%20the%20Immigration%20Enforcement%20Competent%20Auth ority%20%20%20signs%20%281%29.pdf](https://www.helenbamber.org/sites/default/files/2021-12/Detention%20Taskforce_%20Response%20to%20the%20Immigration%20Enforcement%20Competent%20Authority%20%20%20signs%20%281%29.pdf)
- Independent Anti-Slavery Commissioner, (11 November 2021), *Letter from Dame Sara Thornton DBE QPM to Hon Priti Patel MP*. Available at: https://www.antislaverycommissioner.co.uk/media/1695/letter_to_home_secretary_on_ieca_11_november_2021.pdf

81. Following the introduction of NABA, the IECA saw a significant drop in positive decisions raising concerns around the quality and impartiality of decision-making. The conflation between human trafficking and immigration policies compounded by the Government's hostile rhetoric and unevidenced 'abuse of the system' claims are stripping survivors of crucial safeguards, putting them at further risk of re-trafficking.

1.5b Multi-Agency Assurance Panels

82. In 2019, the Home Office introduced Multi-Agency Assurance Panels (MAAPs) to include additional safeguards in the decision-making process. The Panels would review negative decisions at the Conclusive Ground Stage and would pass their observations and opinion to the SCA for reviewing those decisions.

83. An ATMG report highlighted the fragility of the MAAPs, specifically because of their advisory capacity rather than being a decision-making body, with the final decision resting within the Competent Authorities. Furthermore, these panels would only review decisions at the Conclusive Ground Stage, but not at the Reasonable Ground stage.⁴¹

84. In December 2022, the Government removed the MAAPs stating that they were contributing to the decision-making delays and there was already a 'second pair of eyes' process internal to the Competent Authorities, where a manager or a second caseworker would always quality assure decisions before they were served.⁴²

⁴¹ ATMG, (2021), *A review of the National Referral Mechanism Multi-Agency Assurance Panels*. Available at: https://www.antislavery.org/wp-content/uploads/2021/02/MAAPs_report_final.pdf

⁴² Home Office, (4 September 2023), *Letter from Sarah Dines MP, Minister for Safeguarding to Dame Diana Johnson MP, Home Affairs Committee Chair*. Available at: committees.parliament.uk/publications/41721/documents/206636/default/

85. Despite the need to reform the MAAPs to create an effective independent oversight of the NRM decision-making process, the removal of the MAAPs, with no indication of when they will be re-established, left a vacuum, eliminating the only independent quality assurance process within the Competent Authorities decision-making system. This happened one month before the commencement of Part 5 of the Nationality and Borders Act 2022, raising further concerns around the erosion of protection and support mechanisms afforded to survivors and lack of transparency in the Competent Authorities decision-making process at such a crucial time.

2. Whether the Act has kept up to date with developments in modern slavery and human trafficking, both within the UK and internationally

86. When the Modern Slavery Act 2015 was brought into force, the then Home Secretary claimed that this legislation was 'world-leading'⁴³ and 'the first legislation of its kind in Europe'.⁴⁴ However, the Act focused on criminal's prosecutions rather than victims' support as highlighted by the lack of access to work for survivors and the low rate of leave to remain grants.

87. Additionally, as evidenced in previous sections, the most recent legislative and policy changes have resulted in a significant roll back in the access to rights and justice for survivors of human trafficking and modern slavery.

⁴³ Home Office, (2015), *Modern Slavery and Supply Chains Government Response*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/448200/Consultation_Government_Response_final_2_pdf.pdf

⁴⁴ Theresa May, (2016), *Defeating Modern Slavery*. Available at: <https://www.gov.uk/government/speeches/defeating-modern-slavery-theresa-may-article>

88. The NRM remains unfit for purpose for most cohorts of survivors, failing to strengthen prevention, identification and support, while focusing on immigration enforcement.

89. The weakness of the Modern Slavery Act also results from the lack of an updated cross-departmental modern slavery strategy and failure to review and assess the effectiveness of the NRM before and after the implementation of more recent policy and legislative changes.

2.1 Lack of Modern Slavery Strategy

90. The last modern slavery strategy dates to 2014 and despite the Home Office commitment to develop and publish a new strategy by Spring 2022,⁴⁵ they are yet to do so, leaving the response to trafficking and modern slavery fragmented, weak and ineffective.

91. An ATMG report⁴⁶ published in 2018 analyses the UK response to the prevention of trafficking with the below overall findings:

- The UK continues to lack an overall strategy to prevent trafficking in adults and children.
- This leads to an inconsistent and fragmented approach to the prevention of trafficking.
- The UK's lack of a strategic response means that prevention is often seen through the prism and policies of immigration and crime, hindering effective preventative action.

⁴⁵ International Development Committee, (2022), *The UK's approach to tackling modern slavery through the aid programme: report from the Sub-Committee on the work of ICAI: Government response to the Committee Third Report*. Available at: <https://committees.parliament.uk/publications/8768/documents/88765/default/#:~:text=The%20Home%20Secretary%20announced%20a,nature%20of%20these%20terrible%20crimes.>

⁴⁶ Anti Trafficking Monitoring Group (ATMG), (2018), *Before the Harm is done. Examining the UK's response to the prevention of trafficking*. Available at: <https://www.antislavery.org/wp-content/uploads/2018/09/Before-the-Harm-is-Done-report.pdf>

- The result of this approach and the wider policies of austerity, a hostile immigration environment and the threats posed by Brexit, is that the vulnerability of adults and children to exploitation is not reduced and the UK risks contravening its positive obligation to prevent trafficking.

92. A recommendation from this report was for the UK Government, in collaboration with devolved administrations, relevant government departments and civil society, to develop a UK-wide, evidence-based, time-bound, prevention strategy, as well as a child-specific strategy.

93. This recommendation recognises the need for a cross-departmental effort in fighting modern slavery, acknowledging that modern slavery and human trafficking are very complex phenomena and therefore require a coordinated response.

2.2 The National Referral Mechanism is not fit for purpose

94. The National Referral Mechanism was introduced by the modern slavery statutory guidance drafted to bring into force section 49 of the Modern Slavery Act to define the identification and support mechanism for survivors of modern slavery.

95. The introduction of the NRM support framework was a positive step into creating a safeguarding and support mechanism for survivors. However, it was created with a focus on prosecutions and immigration enforcement rather than identification and support for survivors.

96. While traffickers are diversifying and adapting their 'business models' to legislative and policy changes following Brexit or other immigration provisions, the Government is failing to find an effective response to these changes by only focusing on criminalising survivors and limiting support.

97. Compounding these issues is the decreased Legal Aid funding available to survivors in the NRM. While in principle they are entitled to Legal Aid (if they can show that they cannot afford to pay legal costs), many survivors cannot find solicitors who are willing to take on Legal Aid cases and are either forced not to get legal representation or to raise donations from their communities to pay privately funded solicitors. Without proper legal representation, survivors cannot make employment claims against their abusers and will struggle to build their Conclusive Grounds case, often resulting in a negative decision.
98. Additionally, the NRM lacks specialist support for children as well as other categories of survivors. A recent report from the Human Trafficking Foundation found that only 13% of survivors access safe houses through the MSVCC service. This means that most survivors access alternative accommodations and outreach support.
99. The Government also continues to fail providing long term support for survivors by recently reneging on their commitment to provide 12-month support for confirmed survivors, citing recovery through the Recovery Needs Assessment (RNA) as sufficient.
100. However, the ATMG produced the first independent review of the RNA and the findings reflect a discouraging picture. The RNA system is failing survivors of modern slavery, who are not being able to access vital support when they need it, increasing their vulnerability to further exploitation. Survivors who participated in the research, told of getting lost in the RNA's bewildering bureaucratic demands, of feeling untrusted and upset during invasive questioning, being destitute and at risk of re-exploitation, of impossible dilemmas regarding childcare, and of losing essential financial or emotional support through no fault of their own.⁴⁷

101. Some examples of RNA failures were offered by the Snowdrop project, which continues to see evidence that many survivors have complex needs requiring support beyond that which is available under the MSVCC or who have been exited from the service without appropriate or alternative support.
102. *One victim was referred to Snowdrop from the MSVCC with care and mobility needs that had never been referred to adult social care, and another victim was referred during the final stages of pregnancy with health complications, no birth plan or additional support (this victim would have died without Snowdrop's quick intervention).*
103. The Snowdrop Project's post-NRM support for survivors with a positive CGD found that those exiting the NRM require on average a further two years support.

Case study 2

Jonas (name changed) is a 61 year old man who was trafficked from Hungary to the UK.

He was referred to Snowdrop on exiting the MSVCC because he had ongoing support needs. Jonas had limited English, memory problems, low mood, suicidal ideation, hoarded, was socially isolated, struggled to manage his bills and to attend appointments.

A Snowdrop caseworker met regularly with Jonas, arranged for a volunteer to support his English learning and connected him to one of Snowdrop's social activities. They helped Jonas get a referral from his GP for support with his mental health and memory problems. They also supported Jonas with the criminal trial against his traffickers, helping him with techniques to avoid having panic attacks while giving evidence.

His traffickers were sentenced to 49 years. Following the trial Jonas stated that without Snowdrop's long-term support he would never have been able

⁴⁷ ATMG, (April 2022), *One day at a time. A report on the Recovery Needs Assessment by those who experience it on a daily basis.* Available at: https://www.antislavery.org/wp-content/uploads/2022/04/RNA_One_Day_At_A_Time.pdf

to give evidence in court. Jonas continued to engage with Snowdrop who helped him access training, employment and compensation, and Jonas has progressed to studying GCSE maths. This journey has taken several years. This case study shows why long term support is so crucial for survivors of modern slavery and what benefit this can bring to the individual's recovery journey. Long term support offers a path to improved mental-health, integration and re-trafficking prevention, as well as bringing perpetrators to justice, while achieving justice for survivors.
Case study provided by Snowdrop project

104. Similar issues are also present at pre-NRM stage, where the Government reneged on their commitment of implementing Places of Safety. Considering the increased backlog at Reasonable Ground Stage following the implementation of NABA, survivors are left in an extremely vulnerable situation while waiting for support under the MSVCC to start. Pre-NRM support, especially in England and Wales is limited and inconsistent, leaving many survivors vulnerable to re-trafficking and exploitation. This is compounded by a legal aid crisis, leaving survivors without advice and legal representation for many months.

105. A recent report from the British Institute for International and Comparative Law and the Human Trafficking Foundation investigated the identification of survivors of modern slavery, specifically by analysing the Duty to Notify data. This found that many survivors don't consent to enter the NRM because either don't see a benefit in it or because there are more straightforward routes to protection and support, among other reasons.⁴⁸

⁴⁸ British Institute for International and Comparative Law and Human Trafficking Foundation, (2024), *Identification of adults with lived experience of modern slavery*. Available at: https://www.biicl.org/documents/176_identification_full_report.pdf

106. The above issues show the repeated failure of the Modern Slavery response, which is leaving survivors vulnerable to exploitation and re-trafficking, while empowering traffickers.

2.2a Lack of specialist support for children

107. Support for children's survivors of human trafficking and modern slavery is mainly implemented by Local Authorities. However, Local Authorities don't receive any additional funding to support children going through the NRM.

108. Children don't have access to safe houses as there is an expectation that placements offered by Local Authorities should guarantee a high degree of safeguarding. However, until recently, Local Authorities have been routinely using unregulated accommodation for 16-17 years old young people. These accommodations are usually run by private companies with great inconsistency in terms of support for children as well as very limited and fragmented training offered to staff.

109. This was compounded by the lack of a statutory evaluation system to check the quality and suitability of these placements. In March 2023, the Department for Education published a new guidance which sets the quality standards that all supported accommodation should meet, which includes the requirement for all accommodations to be registered with Ofsted to make sure they are under its inspection regime.⁴⁹ All providers of supported accommodation should adhere to these mandatory standards from the 28th of October 2023.

110. Furthermore, there have been failures in finding suitable accommodations for 15 years old and younger children with reports of

⁴⁹ Department for Education, (23 March 2023), *Guidance. Providing supported accommodation for children and young people*. Available at: <https://www.gov.uk/government/publications/providing-supported-accommodation-for-children-and-young-people>

children being placed in hotels, despite the requirement to place them in accommodation which meets the children's home standards. There is also a reluctance to place older children with foster carers even where there is an evidenced need and significant safeguarding risks. There is a national shortage of foster carers and wider accommodation provisions, with many local authorities recently collapsing financially under wider financial strains and budgetary reductions which significantly impact their children's services.

111. Multiple reports from ECPAT UK⁵⁰ have highlighted how the lack of consistency and specialist support in accommodation settings has led to children going missing, many never to be found or to experience multiple episodes of trafficking and exploitation. The housing situation becomes even more unsuitable when unaccompanied children turn 18 and they are usually transitioned to a non-recourse to public funds accommodation if they still have insecure immigration status. These types of accommodation are usually unsafe and inappropriate to house vulnerable young people. Most don't have staff in placement, but only an outreach support worker who may see them from time to time.

112. The transition to adulthood is of great concern due to the decrease in support and transition to adult services within or outside Local Authorities. This is also when children need to consent to remain

⁵⁰ ECPAT UK reports:

- ECPAT UK, (2016), *Heading Back to Harm*. Available at: <https://www.ecpat.org.uk/heading-back-to-harm-a-study-on-trafficked-and-unaccompanied-children-going-missing-from-care-in-the-uk#:~:text=modern%20slavery%20research-,Heading%20back%20to%20harm%3A%20A%20study%20on%20trafficked%20and%20unaccompanied,ECPAT%20UK%20and%20Missing%20People>.
- ECPAT UK and Missing People, (2018), *Still in Harm's Way: An update report on trafficked and unaccompanied children going missing from care in the UK*. Available at: <https://www.ecpat.org.uk/still-in-harms-way>
- ECPAT UK, (2020), *When harm remains: an update report on trafficked and unaccompanied children going missing from care in the UK*. Available at: [https://www.ecpat.org.uk/when-harm-remains-an-update-report-on-trafficked-and-unaccompanied-children-going-missing-from-care-in-the-uk#:~:text=Like%20the%20previous%20reports%20in,%25%20\(24.9%25\)%20since%202018](https://www.ecpat.org.uk/when-harm-remains-an-update-report-on-trafficked-and-unaccompanied-children-going-missing-from-care-in-the-uk#:~:text=Like%20the%20previous%20reports%20in,%25%20(24.9%25)%20since%202018).

in the NRM and they are often not supported to understand their options. These flaws in the system increase the risk of young adults falling through the gaps and being vulnerable to re-exploitation.

113. While children's safeguards remain inconsistent and have been further weakened by new legislation, there were some positive provisions, which were introduced by the Modern Slavery Act and its statutory guidance.
114. The Modern Slavery Act at section 48 makes provision for the introduction of the Independent Child Trafficking Guardianship service. However, despite the multiple reviews of the service and the proven benefits to children, their families and professionals working with them, this is yet to be fully rolled out UK-wide. Furthermore, the Modern Slavery unit is currently reviewing the contract with expected financial cuts and a potential change to more remote interactions with children.
115. In June 2021, the Home Office started a Devolved decision making panel pilot to trial a local multi-agency approach in the NRM decision-making for children. This system facilitates information sharing amongst the child's professional network and strengthens their safeguarding response and cooperation, while reducing the NRM decision time.
116. We welcome the introduction of this process, which constitutes an effective multi-agency model of collaboration and frames modern slavery as a safeguarding issue, giving professionals the opportunity to meet the child's needs and ensure better protection and support. These panels now cover 20 sites across 30 Local Authorities and are usually constituted of professionals such as social workers, police, health, ICTGs and other NGO's.

2.2b No access to right to work while in the NRM

117. In the UK, survivors of modern slavery and human trafficking that enter the NRM and are awaiting to regularise their immigration status are not allowed to work. Once a survivor receives a Positive Reasonable Grounds decision, they will access support through MSVVC contracted organisations, making them dependent on state support.

118. The Home Office Statistics reported that as of 26 January 2023, 76% of referrals sent to the Competent Authorities in 2022 are awaiting a Conclusive Grounds decision. The average time it is taking from referral to Conclusive Grounds decision is 543 days.

119. The long delays in decision making together with the inability to work leave survivors in limbo, heavily impacting on their mental health. This situation negatively affects victims' trust in the same system that should protect and support them, incentivising their return into exploitative situations.

120. To address slavery, the UK needs to ensure that its systems provide meaningful options which assist survivors in their recovery. This includes providing options to build independence and sustainable freedom through work, as well as through education, counselling and access to legal justice.

2.2c Low grant of leave to remain

121. Data confirms that there is a very low grant rate of leave to remain for those survivors receiving a positive Conclusive Ground decision. Due to the significant flaws in the leave to remain process under the NRM, many non-UK national survivors are reliant on the asylum system as a way of being granted a secure form of

immigration status, with a route to settlement, something that is not available for those in the NRM.

122. This issue is even more relevant considering the high number of non UK-nationals referred to the NRM every year - 12,000 in 2022 - and for which immigration status is often a key concern. The number of survivors of trafficking receiving meaningful leave to remain in the UK to assist with their recovery and increase the likelihood of them engaging with prosecutions has dropped to miniscule levels.

123. Between 2020 to 2022:

- 5,578 adults were confirmed as victims of trafficking but only 364 (6.5%) adults subject to immigration control were granted leave via the NRM.
- 5,266 children were confirmed as victims of trafficking, but fewer than 21 (0.4%) were granted leave via the NRM

124. This is despite the high risk of re-trafficking many would face if returned to their country of origin or if they are left with precarious status in the UK, as explored in a recent report by the Helen Bamber Foundation 'Leave in Limbo: Survivors of Trafficking with uncertain immigration status'.⁵¹

125. The rates of grants have dropped significantly following the amended Statutory Guidance which was brought in on the 30th of January 2023 in order to implement section 65 Nationality and Borders Act 2022. The new 'Temporary Permission to Stay' policy (previously referred to as leave to remain) narrows the already restrictive policy for whether a conclusively recognised victim of trafficking should be granted leave to remain and will be only granted in order to:

⁵¹ Ibid., p.9, note 20

- Assist the person in their recovery from any physical or psychological harm arising from their exploitation. However, if the person can get assistance in their home country, then permission to stay may not be granted.⁵²
- Enable the person to seek compensation if they are unable to pursue this remotely.
- Enable the person to co-operate with authorities in connection with an investigation or criminal proceedings. Again, it must be confirmed that it is necessary for the person to be physically present in the UK to cooperate with the investigation or prosecution.

126. This approach fails to address the comprehensive needs of survivors when assessing whether to grant leave, including looking at risks of re-trafficking if returned to their country of origin, safety and protection and all the needs of the survivor.

127. The new requirement to consider whether a person can pursue treatment, compensation or engage with an investigation whilst not living in the UK is resulting in poor decision making and is creating yet another hurdle for survivors of trafficking, who will now have to provide further evidence in support of their request to remain in the UK.

⁵² This reason is now much narrower than in the pre-2023 guidance, which stated that leave could be granted where “necessary owing to personal circumstances.” The interpretation of this pre 2023 was still not considered to be in line with ECAT in respect of personal circumstances as the guidance was still narrower than the explanatory report to ECAT would indicate. In addition, guidance previously stated children could be considered for leave on best interests’ grounds, yet this was rarely granted, and was not in line with Article 14 (2) of ECAT. However, the updated guidance is even narrower, setting out that a grant must be made on the basis of proving the need due to recovery, compensation or cooperation with law enforcement, which is directly in contradiction to the standard set out in ECAT regarding consideration of child victims immigration status.

128. The Helen Bamber Foundation, following a freedom of information request,⁵³ found that the number of people granted leave to remain between February to July 2023 was only 36, with a breakdown of the period of leave as follows (with the numbers from 2022 in brackets next to them for contrast):

- Less than 6 months leave – 11 (54)
- 6-12 months – 17 (135)
- 13-24 months – 7 (15)
- 24+ months – less than 5 (10)

129. This is around a third (proportionately) of the number granted in 2022. It should be noted that there are no publicly available statistics on grants and refusal of VTS leave and these were gathered via a freedom of information request. This results in a lack of transparency around any issues there may be in the process.

130. In addition to contributing to fear of return, this has the effect of making the process even more burdensome and potentially creating further delays. The Helen Bamber Foundation are supporting a number of people who are receiving decisions to refuse leave to remain, despite receiving therapeutic and other support, because a decision has been made that they could receive this treatment in their home country, despite the evidence not always being objective.

131. This was despite several of the survivors having an outstanding asylum claim and coming from countries with high asylum grant rates. As well as disregarding a well-founded fear of persecution and ill-treatment on return, these decisions failed entirely to take into

⁵³ Ibid., p.9, note 20

account the obstacles and difficulties the survivors may face in trying to engage with therapeutic services in their home country.

132. Other frontline organisations have reported that people with experienced legal representatives are having difficulty getting VTS leave granted, even where a person would be expected to be granted, indicating poor decision making. It is also being reported that people without legal representatives are either not getting decisions at all, despite it being an automatic consideration, or are receiving poor negative decisions.

3. The efficacy of the other key provisions of the Act, including definitions, sanctions, reporting, enforcement, and the statutory defence for victims

3.1 Definitions

133. The Modern Slavery Act's definition of 'victim of trafficking' has been narrowed by NABA, particularly through the introduction of the requirement of 'travel' for an individual to be recognised as a 'victim of human trafficking'. Experts in the sector have raised concerns that this definition would result in a reduction of identified victims and it is not in alignment with international law.⁵⁴
134. Additionally, the Modern Slavery Act doesn't include a definition of criminal exploitation, including a specific one for child criminal exploitation, creating an inconsistent and limited understanding of this type of exploitation. First Responders and agencies in children's services and the criminal justice system work to a different understanding of what constitutes criminal exploitation, both for children and adults, making the prevention and response to this type of exploitation insufficient, fragmented and ineffective.

⁵⁴ ECPAT et al, (29 June 2022), *Joint briefing for the Sixth Delegate Legislative Committee debate: the draft Slavery and Human Trafficking (Definition of victim) Regulations 2022*. Available at: <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=103e69d9-db9e-489e-a4df-946af6ff0711>

3.2 Secure reporting

135. The hidden nature of trafficking makes it difficult to gain an accurate picture of its true scale and nature. As a result, anti-trafficking responses are dependent on victims coming forward about their experience. The continued absence of secure reporting options that enable people with insecure status to come forward as victims of crime undermines our ability to address trafficking and run counter to the UK's stated ambition to 'lead the way in defeating modern slavery.'⁵⁵
136. The European Union Agency for Fundamental Rights 2019 research on eight countries including the UK, found that migrant workers rank their insecure status as the main reason they chose not to report exploitation.⁵⁶ The Home Office's approach plays into the hands of exploiters who target those with insecure immigration status with impunity.
137. Organisations such as the Latin American Women's Rights Service (LAWRS) have highlighted that exploiters use the threat of deportation as a means to prevent victims from reporting their modern slavery. We strongly dispute the Home Office's claim that Immigration Enforcement has any safeguarding role. On the contrary, prioritising immigration enforcement undermines safeguarding and leaves victims vulnerable to continued exploitation.
138. Undocumented workers describe feeling caught between an abusive employer on one side, and the Home Office on the other, having no pathways to report workplace violations without the risk of

⁵⁵ The Telegraph, (30 July 2016), *My Government will lead the way in defeating modern slavery*. Available at: <https://www.telegraph.co.uk/news/2016/07/30/we-will-lead-the-way-in-defeating-modern-slavery/>

⁵⁶ European Union Agency for Fundamental Rights, *Protecting migrant workers from exploitation in the EU: workers' perspectives*, 2019, p.74.

losing the income upon which their families depend, being detained or removed from the country.

139. The establishment of secure reporting policies and procedures would mean that individuals with insecure migration status feel able to engage with criminal justice agencies in the first instance. As recognised by the Home Office, victims must be 'treated first and foremost as victims'⁵⁷ regardless of their migration status. While secure reporting pathways do not exist for victims the provision of support and protection will be fettered by the increase in distrust of authorities, a lack of victims coming forward, a reduction in identification of victims and perpetrators, and ultimately, the continued empowerment of exploiters who have an additional weapon in their arsenal to coerce victims.

140. As set out in the explanatory report to Council of Europe Convention on Action against Trafficking in Human Beings 2005 (ECAT), 'the greater victims' confidence that their rights and interests are protected, the better the information they will give.'⁵⁸

141. Recommendations made by the previous Director of Labour Market Enforcement, Matthew Taylor, sought to address a number of the drivers that leave migrant workers vulnerable to labour abuse and exploitation, and ultimately recognising that it is 'vitaly important to maintain a clear dividing line between labour market enforcement and immigration enforcement.'⁵⁹ FLEX holds that the recommendations

⁵⁷ Home Office, (2021) 'Guidance - Review of data sharing: migrant victims and witnesses of crime,' para. 18.

⁵⁸ Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings – CETS 197 – Action against Trafficking in Human Beings, para. 181.

⁵⁹ DLME (2021), United Kingdom Labour Market Enforcement Strategy 2021/22, p.104. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040317/E02666976_BEIS_UK_Labour_Market_Enforcement_Strategy_2021-22_Accessible.pdf

outlined in the DLME's 2021/2022 strategy should be implemented in full.⁶⁰

3.3 Statutory defence

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

143. The statutory defence can be raised for crimes committed as a '*direct consequence*' of modern slavery or human trafficking, however the Modern Slavery Act does not define what direct consequence means, leaving the term open to interpretation and leading to inconsistencies in the application of section 45 defence.

144. Additionally, the Modern Slavery Act provides that a 'reasonable person test' should apply in order to raise the defence - *A reasonable person in the same situation with relevant characteristics would have also committed the act* - but does not clarify where the burden of proof lies in relation to this. The Initial interpretation had placed the burden of proof on the defendant, but this changed after the Court of Appeal in *MK v R*⁶¹ found that the burden on the defendant should be evidential only. The legal burden then falls to the prosecution to disprove these elements beyond reasonable doubt.⁶²

⁶⁰ Ibid., pp. 35–36.

⁶¹ See copy of judgment at: <https://crimeline.co.uk/wp-content/uploads/2018/03/mk.pdf>

⁶² One Pump Court, (7 September 2018), *R v M: clarifying the defence in section 45 of the Modern Slavery Act*. Available at: <https://www.onepumpcourt.co.uk/news/r-v-mk-clarifying-the-defence-in-section-45-of-the-modern-slavery->

145. The Modern Slavery Act also provides schedule 4, which lists those offences for which section 45 can't be raised. This includes more than 100 offences, including common ones which victims are forced to commit as part of their exploitation. The Group of Experts on Action Against Trafficking in Human Beings (GRETA) in their third round evaluation of the UK expressed concerns that this wide list of offences excluded from the section 45 defence, gave a rather narrow interpretation of the non-punishment principle.⁶³

146. If we rely on anecdotal information provided by media reports, it appears there is still a significant lack of awareness or understanding about the non-punishment principle (Article 26 ECAT) and its application through section 45 defence.

Case study 3

In February 2023, a young Albanian man smuggled into the UK via small boat was convicted and sentenced to 13 months for cannabis cultivation. His prosecutor stated: "Arrangements were made for him to travel to the UK to work in the construction industry.

He arrived in an inflatable boat. His passport and identity documents were taken from him. He was initially taken to a London hotel. He was then collected by men who threatened him and his family.

He was told he would have to do the work they gave him, or he would be killed. He was told £10,000 had been paid for his crossing to the UK. He was told he had to work to pay off the debt." He was moved to a different address from which he was not allowed to leave. The plants were already present. He had nothing to do with the electricity supply being bypassed.

[act/#:~:text=A%20reasonable%20person%20with%20relevant,alternative%20to%20committing%20the%20offence.&text=A%20reasonable%20person%20in%20the,would%20have%20committed%20the%20offence](#)

⁶³ GRETA, (20 October 2021), *Third Evaluation Round of the United Kingdom*. Available at: <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>

This demonstrates the failure of the police and courts in understanding, identifying and acting accordingly when presented with cases of forced criminality. This story is an incredibly common occurrence, further examples can be found House of Commons Library as part of the IOM UK's submission to the Home Affairs Committee in March 2023.⁶⁴

*Case study from Stoke-on-Trent live*⁶⁵

147. However, there is no available data about the use of section 45 defence, including from police and Crown prosecution Services, which is limiting our understanding of its application and outcomes. The lack of published data on this prevents the Government from properly understanding the situation and from allocating enough resources to tackle possible issues.

4. The role of the Independent Anti-Slavery Commissioner, including whether the post is sufficiently resourced, and the process of appointment

148. Part 4 of the Modern Slavery Act 2015 introduced the role of an Independent Anti-Slavery Commissioner, who has a UK-wide remit to encourage good practice in the prevention, detection, investigation and prosecution of modern slavery offences and the identification of victims.

149. However, the post of Independent Anti-Slavery Commissioner was vacant since April 2022 and has only recently been filled by

⁶⁴ IOM, (March 2023), *Written evidence submitted by the International Organisation for Migration (HUM0034)*. Available at: committees.parliament.uk/writtenevidence/119350/pdf/

⁶⁵ Stoke-on-Trent live, (24 February 2023), *Albanian who arrived in UK in dinghy grew cannabis to pay off £10k debt*. Available at: [Albanian who arrived in UK in dinghy grew cannabis to pay off £10k debt - Stoke-on-Trent Live \(stokesentinel.co.uk\)](https://www.stokesentinel.co.uk/albanian-who-arrived-in-uk-in-dinghy-grew-cannabis-to-pay-off-10k-debt)

Eleanor Lyons, who started her role on the 11th of December 2023. There should be a deputy IASC which would allow greater resilience for the office in case of another long period of time while the IASC role becomes vacant.

150. The appointment process also lacks transparency, and it is made behind closed doors by the Home Secretary compromising the independence of the role. There were two recruitment processes while the IASC role was vacant with no reasons given about why the first round was not successful or had been stopped.

151. Furthermore, in the past, there has been a lack of transparency from ministers, with no clear reasons given for why they have decided not to implement IASC recommendations.

152. This role is funded and sits within the Home Office, which decides its resources and has oversight over the role. This setting compromises the independence of the role and doesn't allow enough resources to have sufficient and appropriate monitoring and oversight. This has been demonstrated by the fact that the Independent Anti-Slavery Commissioner office's funding has been cut compared to its predecessors. This shows the de-prioritisation of modern slavery and the dependency on the role of the Home Office.

5. Suggestions for improvements that could be made to the Act to help it to better achieve its aims

153. The Modern Slavery Act 2015 should focus more on identification, support and protection of survivors of modern slavery rather than on enforcement and prosecution.

154. Some of our recommendations as follows:

- Embed a cross-departmental approach in the Modern Slavery Act to ensure and strengthen cooperation and

accountability among departments involved in preventing trafficking and exploitation as well as in the safeguarding and support of modern slavery survivors;

- Review the statutory guidance under section 49 by rolling back encroachment of immigration enforcement from the Nationality and Borders Act 2022. Some of the proposed solutions are:
 - Reinstate the *suspect but cannot prove* threshold for Reasonable Grounds decisions
 - Remove the public order disqualification policy
 - Reintroduce reformed Multi Agency Assurance Panels to ensure independent oversight of Competent Authorities decision-making at both Reasonable and Conclusive Ground stage.
- Increase the number of non-statutory first responders, while improving the training on offer to ensure consistency across the UK;
- Grant the right to work to all survivors in the NRM;
- All survivors of trafficking with a positive final ('Conclusive Grounds') decision from the National Referral Mechanism (NRM) should be automatically granted support, including leave to remain and recourse to public funds, for at least 30 months with a route to settlement;
- Fully roll out ICTG service and Devolved Decision-making Panels for Children;
- Introduce places of safety across England and Wales to ensure appropriate support for potential survivors of

modern slavery prior to entering the NRM. This will enable survivors to make an informed decision about entering the NRM and to start their recovery journey in a safe space as well as preventing their re-trafficking;

- Publish data on the application of section 45 defence and review the offences included in section 4 on the basis of those commonly committed by survivors of modern slavery.

26 March 2024