

New Plan for Immigration consultation response

Identifying and supporting victims of modern
slavery and human trafficking

May 2021

New Plan for Immigration consultation response

On the 24 March 2021, the Home Office issued a consultation document “[New Plan for Immigration](#)” which aims to reform the asylum system in the UK. It has the following three objectives:

- 1) To increase the fairness and efficacy of our system so that we can better protect and support those in genuine need of asylum
- 2) To deter illegal entry into the UK, thereby breaking the business model of criminal trafficking networks and protecting the lives of those they endanger
- 3) To remove more easily from the UK those with no right to be here

This submission has been prepared by the Modern Slavery Policy Unit in response to the Government’s public consultation on the New Plan for Immigration. It seeks to answer the questions related to modern slavery, therefore it is mainly focused on responding to Chapter 6: Supporting Victims of Modern Slavery. However, it also provides answers to certain questions in Chapters 4 (Disrupting Criminal Networks and Reforming the Asylum System) and 5 (Streamlining Asylum Claims and Appeals), as the changes proposed in those chapter have a potential negative impact on the modern slavery response.

The Modern Slavery Policy Unit is a joint initiative co-led by Justice and Care and the Centre for Social Justice (CSJ). Justice and Care is a non-governmental organisation that brings together specialists to release and care for victims, dismantle the criminal networks and organised crime groups responsible for this crime and spark systemic change - both national and international. The CSJ is an independent think-tank that aims to place social justice at the heart of British politics by seeking to influence the policies and laws that the Government creates in ways that address the root causes of poverty. The Modern Slavery Policy Unit’s mission is to keep modern slavery at the top of the British political agenda and ensure that the UK fights this crime. It does so by advocating for policy and legislation that centres around victims and their recovery needs; bridging the gap between those working on the frontline and decision-makers in Westminster; and bringing together and equipping a strong cross-party caucus of parliamentarians to lead the fight against slavery.

Chapter 6 - Supporting Victims of Modern Slavery

Q32: Please use the space below to give further feedback on the proposals in chapter 6. In particular, the Government is keen to understand:

- (a) If there are any ways in which these proposals could be improved to make sure the objective of building a resilient system which accurately identifies possible victims of modern slavery as quickly as possible and ensures that support is provided to genuine victims who need it is achieved; and
- (b) Whether there are any potential challenges that you can foresee in the approach the Government are taking around modern slavery.

Please provide as much detail as you can.

1. Improving First Responders' understanding of when to make a referral into the National Referral Mechanism (NRM) and when alternative support services may be more appropriate.

SUMMARY: We welcome the proposal to improve the First Responders' (FR) understanding of how to quickly spot the signs of slavery, when to refer a potential victim to the NRM and when alternative support services may be more appropriate. This training should be mandatory and embedded in professional qualifications. Training should include an increased emphasis on understanding victim vulnerability and the impact of trauma, not on credibility alone.

Training for FRs in fact, is long overdue. Our research shows that many frontline practitioners in local authorities and police are still not aware of their duties under the Section 52 of the Modern Slavery Act, and therefore fail to identify and refer potential victims of modern slavery for support.¹ There is a further problem of poor quality of the NRM forms filled by the FRs, which leads to delays and poor decision making. In our recent interviews with First Responders a concern was raised that digitisation of the NRM forms had led to oversimplification without a minimum requirement of information which had led to some areas on the forms being left blank. Such bad practice must be addressed and accountability needs to be introduced. It is encouraging to hear that the Home Office have already launched a new training package to support First Responders in their duties. However, it needs to go further. We have previously recommended introducing mandatory modern slavery training which needs to start early, with modern slavery courses embedded within professional qualifications and inductions.² Designing an efficient training delivery plan is key to successful implementation and should not be overlooked.

We welcome that the Government wants to ensure genuine victims are identified as early as possible and are given the support they need. Therefore, it is important to get the early engagement with potential victims right. The FR need to be trained to understand the barriers to disclosure potential victims have, including the fear of authorities, the impact trauma may have on victims accounts leading to contradictory statements, understanding of the cultural backgrounds which may also impact the way potential victims engage. An example of good practice is the modern slavery training standards framework launched in September 2020 by Skills for Care, St. Mary's University and the Snowdrop Project that sets out the knowledge and skills required by those who may meet victims and survivors of slavery and human trafficking.³

1 It Still Happens Here: Fighting UK Slavery in the 2020s, Justice and Care, the CSJ, July 2020 <https://www.justiceandcare.org/human-trafficking/it-still-happens-here/>

2 Ibid.

3 Modern Slavery Training Standards, Skills for Care, St. Mary's University and The Snowdrop Project, September 2020 www.stmarys.ac.uk/news/2020/09/csms-framework

There should be increased emphasis in training on understanding victimhood and the impact of trauma, not on credibility alone. By emphasising the importance of credibility, the wrong message is sent to FRs. A message of doubt and disbelief, which is not the right position to start the engagement with potential victims of slavery. They need to feel believed and trusted, safe and secure, to start disclosing what has happened to them. The Statutory Guidance under Section 49 of the Modern Slavery Act sets out the key principles of working with vulnerable people in Chapter 6 and Annex D. These have to be adhered to in practice and become a core part of the First Responder training.

It is also important to ensure that an NRM referral is made for a potential victim in such cases when a referral to alternative support services is made as well. This will allow for the appropriate needs assessment to be performed by a trained specialist who understands the complex needs of slavery victims. It may be the case that a potential victim who is entitled to support services from the local authorities stays within their care but would also benefit from outreach services that are specially tailored to the needs of victims of slavery and human trafficking.

We recommend:

- 1) Introducing mandatory modern slavery training for First Responders, as well as including modern slavery courses within professional qualifications and inductions to ensure that newly arrived staff are prepared for their roles and understand modern slavery.
- 2) Introducing modern slavery training standards for all First Responders to ensure consistency across the range of professions and across the country.
- 3) Designing a delivery plan for this training to ensure a timely roll-out and the ability to track progress, as well as hold FR organisations accountable.
- 4) Modern slavery training needs increased emphasis on the understanding of underlying vulnerabilities, victimhood and the impact of trauma on victims, rather than focus on credibility alone.
- 5) Training needs to include case scenarios where FRs are required to fill in the NRM forms under pressure or with little account from potential victims to prepare them as much as possible for real live situations.
- 6) Making an NRM referral should be a default position for a consenting adult potential victim, even when a referral to alternative support is made as well.

2. Clarifying the Reasonable Grounds threshold.

SUMMARY: *Amending the Modern Slavery Act 2015 definition to “reasonable grounds to believe that a person is a victim” and further amending the Statutory Guidance definition to “reasonable grounds to believe, based on objective factors but falling short of conclusive proof, that a person is a victim of modern slavery” should be approached with cautiousness and scrupulous analysis to avoid unintentionally increasing barriers for genuine victims.*

While we understand and support the Government’s intention to root out bogus claims, we are also concerned that a higher Reasonable Grounds (RG) threshold may impact negatively on genuine victims of modern slavery, their ability to access the support they need, as well as their confidence in the system. Therefore, we believe that before any changes to the RG threshold are introduced that may unintentionally restrict victims’ rights to support, a proper analysis of the problem and its scale needs to be conducted in order to identify the most effective, proportionate and suitable solution.

In our report “It Still Happens Here” we have identified a number of barriers to accessing the support services that exist in the current system. We are concerned that this situation can be further exacerbated for the following reasons:

- 1) Adult victims of modern slavery need to provide informed consent to be referred to the NRM for support. Many already refuse to enter the NRM for a number of reasons. The Duty to Notify data shows that 2,178 potential adult victims were identified in 2020 who did not agree to enter the NRM, which is 43% of those who did (5,087

adult victims referred into the NRM).⁴ Anecdotal evidence suggests that the percentage is likely to be higher and, in some areas, could be 50-60% of adult victims not entering the NRM. While there is no academic data collected on reasons why potential victims refuse to engage with the NRM support, casework evidence suggests that one of the key reasons is fear of the authorities and fear of deportation, as the NRM is seen as a Home Office led system, a fear reinforced by the traffickers as a form of control. A firewall between immigration and modern slavery is needed to help genuine victims to break the cycle of exploitation, speak up and engage with support. Another reason is the fear of not being believed and/or having to prove that they are true victims. An increased RG threshold and need to establish “objective factors” just hours after rescue could lead to more potential victims being unwilling to engage and choose to remain in the situation of exploitation or wishing to go home.

- 2) Currently, it takes on average five days for an RG decision to be made following an initial referral, which enables access to the support provided during the “recovery period” of at least 45 calendar days. However, there is a risk of causing delays at this stage due to a higher threshold for RG decisions and the need to establish “objective factors”. In our research we have found that due to the lack of places of safety, potential victims are often placed in a bed and breakfast or a hotel only to go missing in the morning, or are taken and interviewed at the police station.⁵ We are concerned that if RG decision making is going to take longer, without the existence of appropriate places of safety for potential victims, many more will abscond and disengage after being rescued. It is vital to provide places of safety to accommodate potential victims after rescue and for the duration of the decision-making at the RG stage to prevent them from becoming destitute or re-trafficked. Places of safety would also provide a better environment to help build trust and gather necessary information to ensure a better quality of the decision-making.
- 3) Another concern is related to the poor quality of NRM referral forms which already hinders the decision making process as it stands. It is possible that unsubstantiated claims are made not because of the poor account from the victim, but because of lack of experience and knowledge of the First Responder, as well as time pressure that they could be under. Without mandatory training standards for First Responders and robust quality assurance mechanisms by the Single Competent Authority to ensure the NRM forms are filled in properly and provide the required level of detail, the higher RG threshold is likely to leave many more genuine victims without the support they need.

As mentioned above, the emphasis on credibility at both RG and CG decision points appears to be a cause for concern. The emphasis should be on understanding the vulnerability of the potential victims, their cultural backgrounds, the impact of trauma, as it is currently provided in the Statutory Guidance under Section 49 of the MSA. It is a well-known fact that due to trauma victims may be providing contradictory information and facts, and also have memory lapses. Having spoken to a number of police officers across England and Wales, their experience is that it may take days or even weeks for victims to build trust and start disclosing information about their experience. Victims often need time to reflect and this fact should be taken into consideration when designing new changes to the system, including the introduction of a “one-stop” process for those in the asylum system.

We are highly concerned about the proposal for bilateral and multi-lateral agreements to enable the removal of victims of modern slavery to signatory countries of the Council of Europe’s Convention on Action against Trafficking in Human Beings (ECAT) for their needs to be met there. It is unclear what the purpose would be of removing such victims and how it would be ensured that they received support in another country after removal. Nor is it clear whether such a policy would comply with the protection against removal under ECAT, unless removing victims on the grounds of public order (addressed below).

We understand that amending the Modern Slavery Act 2015 definition to “reasonable grounds to believe that a person is a victim” will bring the legislation in line with the Article 13 of ECAT. However, we are concerned that in legal and practical terms this may result in far fewer victims of modern slavery being able and willing to access the support they need and deserve. Therefore, before the Section 49 Guidance is amended to say “reasonable grounds to believe, based on objective factors but falling short of conclusive proof, that a person is a victim of modern slavery” we

4 NRM end of the year summary 2020, Home Office, March 2021 <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2020>

5 It Still Happens Here: Fighting UK Slavery in the 2020s, Justice and Care, the CSJ, July 2020

recommend that:

- 1) An open and transparent assessment of the scale and severity of the problem being addressed by the change to the RG threshold is carried out in order to identify a proportionate and most suitable solution;
- 2) Careful consideration is given to what this might mean for genuine victims of slavery as well as their ability and willingness to engage with the support system and police investigations;
- 3) Case analysis is carried out testing the new approach and analysing whether genuine victims who are in the support system would have been missed under the new threshold;
- 4) A further consultation with FRs and charities providing support services to victims of modern slavery be held to understand the benefits and potential negative effects the new definition might have.

For the Single Competent Authority(SCA) we recommend:

- 5) Introducing quality assurance and accountability mechanisms to increase the quality of information provided in NRM forms, ensure that poorly filled in NRM forms lead to further investigation rather than being simply refused, and more information is gathered in order to make a well-informed decision.
 - 6) Ensuring the SCA decision-makers are trained to a high standard to understand the complexities of slavery, cultural backgrounds, underlying vulnerabilities and the impact of trauma. These decisions bear significant weight on the person's life and those who are recruited to make them have to be properly resourced and equipped.
3. Clarifying the definition of "public order" to enable the UK to withhold protections afforded by the NRM where there is a link to serious criminality or risk to UK national security.

SUMMARY: *We welcome the proposal to provide transparency by defining the public order grounds on which protection and support under the NRM may be withheld or discontinued, but this must be proportionate and balance public protection with supporting victims. The proposed definition of a prior conviction of 12 months or more is too wide and likely to exclude from support genuine victims who pose no risk to the British public. The definition and plans for its implementation need to be refined to focus on potential victims who are sexual, violent or repeat offenders and pose a serious risk to the public allowing for discretion on a case by case basis.*

We welcome the proposal to define the public order grounds on which protections and support under the NRM may be withheld or discontinued. Establishing a clear definition of these grounds will aid transparency in addition to ensuring that the general public is protected from persons who pose a risk. In establishing these grounds, care must be taken to ensure that the response is proportionate to the issue it seeks to address. We understand the Government's concern about the recent increase in the number of foreign national offenders in immigration detention referred to the NRM and receiving positive Reasonable Grounds decisions. However, these still amount to fewer than 200 individuals per year, with no published data as to how many of these fit the serious criminality profile highlighted in the command paper.⁶ Victim engagement is key to pursuing and prosecuting the organised criminal networks perpetuating modern slavery. Care must be taken to ensure that efforts to address concerns about possible false claims from foreign national offenders do not dissuade genuine victims from engaging with the authorities.

We agree that the focus of the public order grounds definition should be "serious criminality" and those who pose a risk to national security.⁷ However, we do not agree that a prison sentence of 12 months is an appropriate indicator of serious criminality, as proposed, given the potential consequences of removing protection and support from people who may be genuine victims of modern slavery. Setting the threshold for serious criminality at 12 months is likely to

⁶ Issues raised by people facing return in immigration detention, Home Office. 16 March 2021 <https://www.gov.uk/government/publications/issues-raised-by-people-facing-return-in-immigration-detention/issues-raised-by-people-facing-return-in-immigration-detention>

⁷ New Plan for Immigration Command Paper 412, HM Government, March 2021 page 33

mean that many genuine victims of modern slavery who have not committed offences in the UK and/or pose no risk to the British public may be excluded from support and returned to their country of origin at risk of re-exploitation.

European nationals with existing convictions are known to be targeted for exploitation in modern slavery and average sentences are often higher than would be expected in the UK for the same offence.⁸ DCI Nick Dale, Senior Investigating Officer in the Operation Fort modern slavery case told us that many of the victims in that case had been targeted for exploitation due to their previous convictions. Comparative analysis of sentencing in Europe conducted by the House of Commons library in 2015 shows that for the year 2010, the modal average sentence length (most common) for the crime of theft was one year or longer in six out of 22 countries with a further four with an average of six months to one year imprisonment.⁹ Notably those six countries include Albania and Poland, countries which often see referrals to the NRM. The data tables show that 54.7% of prison sentences for the crime of theft in Poland in 2010 were of one to two years in length. In England and Wales in the same year the majority of sentences for this offence (83.9%) were for less than six months and only 4.2% for one to two years. Overseas convictions received in countries which do not have fully free and fair legal systems can also not be viewed in the same manner as those from countries where the rule of law is stronger.

Modern slavery victims may also have convictions for offences committed as a result of their exploitation. Such victims should be protected from prosecution or conviction by the statutory defences in England and Wales and Northern Ireland and the Lord Advocate's Instructions in Scotland.¹⁰ However, exploitation is not always identified prior to conviction. Such victims should not be excluded from support under the NRM on the basis of convictions resulting from their exploitation.

The application and definition of the public order grounds must balance the desire, and right under ECAT, to protect the public with the ECAT obligations to support and protect those for whom there are reasonable grounds to believe they are victims.

Consideration should also be given to the potential negative impact on genuine victims' ability and willingness to support police investigations into their exploiters if they are denied support and protection under the NRM. It may even dissuade victims from engaging with the police at all if they come to know that they may be refused support on the basis of prior convictions which may hinder efforts to dismantle criminal slavery networks. Given the low number of Foreign National Offenders referred to the NRM a balance must be struck between deterring false claims from foreign national offenders and deterring genuine victims from coming forward and assisting the prosecution of organised criminals engaged in modern slavery.

We are concerned that the intention to apply the public order exclusion at the reasonable grounds stage may either mean that it will be based on limited information and scrutiny or that in allowing for additional information to be gathered and considered RG decisions will be delayed, delaying victims' access to support.

We recommend several modifications to this proposal in order to achieve the aim of ensuring support is provided to genuine victims and they are able to engage with police:

- 1) The Public Order exemption must be clearly defined as an exception to the norm, with a stated presumption in the definition that a potential victim meeting the threshold for a reasonable grounds decision should be granted a positive RG decision with the accompanying support and protections unless they pose a risk to the public or national security. The legislation on the exemption should therefore accompany a statutory protection against removal as the norm for potential victims of modern slavery with a positive RG decision.
- 2) The definition of "serious criminality" should be amended to focus on sexual or violent offenders who pose a current and genuine risk to the public¹¹, offenders with multiple convictions for other offences, and those who pose a risk to national security instead of a simple 12 month tariff. This would meet the concerns outlined in the command paper about "child rapists" and national security risks. It would also allow for the risk posed by the potential victim to be assessed as well as a review of their offending history.

8 Taking back control of our borders? The impact on modern day slavery, Human Trafficking Foundation, 2020, page 26

9 Research Briefing Comparative Prison Sentences in the EU, House of Commons Library, June 2015 <https://commonslibrary.parliament.uk/research-briefings/cbp-7218/>

10 Modern Slavery Act 2015 section 45; Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 section 22; Lord Advocate's Instructions for Prosecutors when considering Prosecution of Victims of Human Trafficking and Exploitation

11 Clause 2, new subsection 52B in Lord McColl's Modern Slavery (Victim Support) Bill 2019-21 uses this definition.

- 3) Assessment of serious criminality should also include consideration of the country and fairness of the justice system in which the conviction occurred.
- 4) The statutory definition and accompanying guidance should clarify that the application of the public order grounds to restrict support under the NRM and/or enable someone to be removed from the UK is a matter for discretion rather than being automatically applied wherever a potential victim is found to have convictions meeting the threshold.
- 5) Clear guidance should be provided for decision-makers who will be applying the public order grounds. Guidance should include a statement of the above presumption, the information required in order to make a decision to exclude a person on public order grounds and how that should be obtained, and matters to be considered when deciding whether to exclude the person from the NRM, even where they may meet the definition, including: consideration of whether the person poses a genuine and current risk to the public or national security; the length of time since the conviction; whether the conviction was in the UK or overseas; the possibility that convictions may have increased the victim's vulnerability to exploitation; consideration of whether the offence was committed as a result of the person's exploitation (and would thus be covered by the statutory defence under section 45 of the Modern Slavery Act); and the person's need for medical treatment, counselling or other support to recover from their exploitation.
- 6) Training should be provided for decision-makers on applying the public order exclusion, including how to obtain the necessary information prior to making the decision, the need to balance public protection with ECAT obligations and the circumstances in which it might not be appropriate for a victim to be excluded from the NRM even where they may meet the public order grounds definition.

4. Legislating to clarify the basis on which confirmed victims of modern slavery may be eligible for a grant of temporary, modern slavery specific, leave to remain.

SUMMARY: *We welcome the proposal to establish in legislation the basis on which confirmed victims of modern slavery are eligible for a grant of temporary leave to remain. However, the lack of clarity about the criteria on which leave will be granted, including the restriction to victims with recovery needs linked to exploitation, does not provide the necessary increased certainty to support victims' recovery, prevent re-exploitation and enable more to engage with police investigations. We recommend leave is granted to all confirmed victims.*

As the command paper states, "certainty over their immigration status" is for many victims a "crucial enabler to their recovery and to assisting the police in prosecuting their exploiters".¹²

We have, however, identified three key challenges that must be overcome if this proposal is to provide the certainty that victims need for their recovery and to facilitate their participation in criminal investigations.

A key problem with the current discretionary leave policy and process under which confirmed victims of modern slavery can receive temporary leave to remain is that it is not available to all victims and victims must meet additional criteria, criteria which are not always clear. Unfortunately, the proposal in the command paper does not provide sufficient clarity to give confidence that it will resolve this problem. There are two challenges:

Firstly, victims do not have certainty about whether or not they will be granted leave. Few confirmed victims currently receive temporary leave to remain under the discretionary leave policy, just 11% of confirmed victims who received a positive conclusive grounds decision between 1 January 2016 and 31 March 2020 received a grant of discretionary leave.¹³ Such a low number of grants under the present policy does not give victims certainty about the likelihood of receiving leave. Case studies also point to inconsistency in decision-making which exacerbates this uncertainty. For

¹² New Plan for Immigration Command Paper 412, HM Government, March 2021 page 33

¹³ Data tables released pursuant to a Freedom of Information request made by ECPAT UK. <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=6fe-8c52a-2290-4058-98da-68c8f1b534bd>

example, in 2018 MPs were told about two victims from the same country exploited in the same location who received different decisions, one initially granted leave, the other not.¹⁴ Whilst more victims have received grants of asylum or humanitarian protection, by no means do all non-UK national victims receive a grant of leave.¹⁵

Unfortunately, the proposal for legislation setting out that temporary leave to remain “may” be available for victims with long term recovery needs or who are engaged in police investigations lacks the clarity necessary to give confirmed victims certainty about their immigration status.

The proposal that only victims with “recovery needs linked to their modern slavery exploitation” adds a layer of uncertainty to the indication that whilst temporary leave may be available it will not be guaranteed. It is unclear how, by whom and on what basis the connection between a particular need that a victim may have and their exploitation will be assessed, and therefore whether it would be considered a long-term recovery need leading to a grant of temporary leave. Nor is it clear whether a need for immigration leave in order to be eligible for mainstream services that would assist with a victim’s recovery will be considered as a recovery need in itself.

Victims of modern slavery have many overlapping and intersecting needs and it is not a simple matter to suggest that needs can be split into those linked with exploitation and those which are not. How this link is defined will significantly impact the effectiveness of the proposal in providing certainty about immigration status for victims. All of a victim’s needs and vulnerabilities can impact their recovery. Needs and vulnerabilities may have been exacerbated by exploitation although not caused by it, or can impact a victim’s ability to access or engage with services or other provision and can make recovery from physical/psychological injury sustained during exploitation more difficult. However, these needs are not likely to fall within the definition of needs linked with the person’s exploitation experience. These wider vulnerabilities have often been a factor in the person becoming exploited and certainly, if left unaddressed, will leave victims at risk of re-exploitation.

Needs assessments should be person-focused, centered on the victim’s recovery needs and promote their wellbeing in the same manner that the duty to promote wellbeing underpins local authority duties under the Care Act 2014.¹⁶ There is a risk that narrowing leave to remain to needs considered to be linked to exploitation will deflect focus away from victim recovery and become embroiled in bureaucratic procedures for determining eligibility.

It is vital that the assessment of victims’ long term recovery needs should be conducted separately from the decision to grant temporary leave. Immigration officials do not have the training or expertise in providing support to vulnerable persons or modern slavery necessary to make such an assessment of need. Both the legislation and accompanying guidance should clarify that temporary leave will be granted where a separate assessment process determines a victim has long term recovery needs.

Without greater clarity and wider eligibility than the current discretionary leave policy victims will continue to lack certainty about their immigration status and access to support services. Lack of immigration status and fear of deportation will continue to be a “significant hurdle” to victims engaging with police.¹⁷ In a survey we conducted with support workers working with victims of modern slavery all the respondents said that uncertainty about immigration status is a factor in victims’ decision-making about whether or not to engage with investigations and most said that uncertain immigration status is a major factor in these decisions.¹⁸

Uncertainty about immigration status is not only a psychological hurdle to victims’ participation in investigations, but can also be a practical barrier. Victims who are too fearful to engage with police prior to a conclusive grounds decision and who are not eligible to seek asylum or receive temporary leave on other grounds will have no right to remain in the

14 Oral Evidence from Lara Bundock of the Snowdrop Project to the Home Affairs Select Committee: Home Affairs Committee Oral evidence: Modern Slavery, HC 1460 Tuesday 6 November 2018 Q115

15 It is not possible to state exactly how many confirmed victims received neither discretionary leave nor asylum/humanitarian protection as where a victim received both discretionary leave and asylum they appear twice in the published data table.

16 Section 1 of the Care Act 2014 establishes a general duty of promoting the wellbeing of an individual where a local authority is exercising care and support functions under part 1 of the Act in respect of that individual. Section 1 also provides a definition of wellbeing and other matters to be taken into account in providing care and support.

17 The Fight Against Modern Slavery and Human Trafficking The Role of Victim Support in Prosecuting this Crime, Nusrat Uddin, 2018

18 15 out of 21 respondents described immigration status as a major factor. Survey conducted in January 2021 with 21 respondents from across 16 specialist NGOs providing support to victims of modern slavery.

UK. Opportunities for UK police to engage with these victims at a later stage and gather their vital evidence will then be lost.

Secondly, as we have previously identified in our 2020 report “It Still Happens Here” a lack of immigration status, and therefore having no recourse to public funds means victims are ineligible for a variety of mainstream statutory services which may be necessary for their recovery, putting them at risk of being drawn back into exploitation.¹⁹ Not only does this hinder victims’ efforts to rebuild their lives, it also means that victims with recovery needs that could have been appropriately met by statutory services outside the Modern Slavery Victim Care Contract (MSVCC) are unable to leave safehouses or outreach support because they are ineligible for mainstream services (as highlighted by the Independent Anti-Slavery Commissioner in January 2021).²⁰ This delays victims’ recovery and reduces the capacity within the MSVCC to accommodate and support new victims coming into the NRM.

The final challenge we have identified relates to the process of determining whether a victim will receive temporary leave to remain. There are significant delays in the current discretionary leave process which contributes to a sense of uncertainty for victims about their status and their future.²¹ Delays in discretionary leave decision-making also impact victims’ access to mainstream services hampering their recovery and preventing them moving out of the MSVCC into other services.

There are particular problems with the process for providing discretionary leave to remain to victims who are supporting investigations. The process relies on police officers to write letters in support of victims’ applications and to keep track of the immigration status of victims. This creates an administrative burden for police officers in addition to the many complexities of modern slavery investigations. It also presents police officers with an unwanted degree of moral responsibility for deciding whether or not to support an application for discretionary leave for a particular victim.²² Moreover, many police officers do not know victims can be granted discretionary leave.²³ Without changes to the process of granting temporary leave to victims who are supporting criminal investigations the proposal will not achieve the aim of providing clarity and certainty to victims nor facilitate participation of more victims in criminal proceedings.

We recommend the following modifications to this proposal in order to achieve the aim of providing certainty to victims about their immigration status to enable their recovery and facilitate participation in criminal investigations and trial:

- 1) Certainty about immigration status can be provided by clarifying in the new legislation that all confirmed victims of modern slavery with a positive conclusive grounds decision will be granted temporary leave to remain (subject to a public order exemption) rather than restricting provision to those with “long term recovery needs linked to their modern slavery exploitation” or supporting criminal investigations.
- 2) If immigration leave is not to be provided to all confirmed victims, then the legislation should provide greater certainty by removing the requirement for recovery needs to be linked with exploitation.
- 3) The legislative provision should also be clarified to state that leave “will” be granted where the criteria are met, subject only to a public order exemption, thus providing greater certainty.
- 4) Guidance accompanying the legislation should provide clear instruction for assessment of long-term recovery needs including a duty to promote the wellbeing of the victim as defined in the Care Act 2014 s1. It should ensure that all a victim’s needs and vulnerabilities are addressed to promote recovery and resilience to re-exploitation, rather than a narrow definition of needs linked with a victim’s exploitation. This guidance should also clarify that an immigration status can be a recovery need where necessary for eligibility for services that can meet recovery needs.
- 5) Legislation and guidance should clarify that assessment of long-term recovery needs will be conducted separately from granting leave and will be conducted by staff with expertise and training in social care for vulnerable adults

19 It Still Happens Here: Fighting UK Slavery in the 2020s”, Justice and Care, the CSJ, July 2020 <https://www.justiceandcare.org/human-trafficking/it-still-happens-here/>

20 Supporting survivors to regain independence, IASC commentary, January 2021 <http://www.antislaverycommissioner.co.uk/news-insights/iasc-commentary-supporting-survivors-to-regain-independence/>

21 Ibid.

22 Interview with DCI Nick Dale January 2021.

23 Victims of modern slavery report HC 803, Work and Pensions Select Committee, April 2017 page 12; Interview with Harry Dick, Vulnerabilities Crime Coordinator, East Midlands Region (EMSOU) January 2021

and modern slavery.

- 6) The process for granting temporary leave to remain (on all grounds) should be amended so that grants of leave to remain are made and communicated to victims at the same time as a positive conclusive grounds decision to avoid delays.
- 7) Police officers should be relieved of the administrative burden associated with granting temporary leave to victims of modern slavery.
- 8) Guidance and training should be provided to police officers about the temporary leave provision.

We also recommend that the Government consider further provision beyond the period of temporary leave to offer victims greater certainty, akin to the US-style “Trafficking in Persons Visas” (T-Visa) which provides a longer period of leave where a victim is assisting as a witness in a criminal investigation. We note that the cap of 5,000 grants per fiscal year set for this visa by the Trafficking Victims Protection Act 2000 sec 107 has never been reached since its creation and so does not appear to have led to a pull factor.²⁴

5. Bringing forward other future legislation to clarify international obligations to victims in UK law.

SUMMARY: *We welcome the Government’s intention to bring forward future legislation to clarify international obligations to victims in UK law. Doing so is urgent and essential.*

One of our key recommendations in the “It Still Happens Here” report called for the Government to enshrine victims’ rights to support in national legislation to protect and guarantee their access to support. As our report has argued, putting victims first and guaranteeing their access to support is critical to gaining trust and unlocking crucial evidence against their traffickers.

Currently, victims, and those who advocate on their behalf, have to rely on the international legislation that the UK is party to. The Modern Slavery Act does not place a duty on the State to provide support to victims of modern slavery nor does it set out the specific support measures that victims are entitled to, such as access to safe and appropriate accommodation. Contrary to the Modern Slavery Act, the respective law on human trafficking and exploitation in Northern Ireland and Scotland did go a step further and put a legal duty on Ministers to provide support to potential victims between their RG and CG decisions.²⁵ Moreover, both Acts reference that support should be provided prior to the RG and post CG decision as long as deemed necessary, which gives the support providers far greater flexibility in addressing the individual needs of their clients. As highlighted by the first UK Independent Anti-Slavery Commissioner, Kevin Hyland OBE, in his letter to the former Minister for Safeguarding, Sarah Newton MP, having victim support in statute in Northern Ireland and Scotland allowed the provision of a holistic, individually tailored needs based approach and he called for consistency across the UK.²⁶

We understand that Parliamentary time is limited, however we believe that passing legislation to enshrine in law the UK’s international obligations towards victims of modern slavery is essential. Lord McColl’s Private Member’s Bill - the Modern Slavery (Victim Support) Bill 2019-2021 which would give victims in England and Wales a guaranteed right to support during the initial period when the NRM decision is being made, and for a further minimum of 12 months afterwards - is a good example of what a national piece of legislation could look like.

24 U and T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges, and Other Government Agencies, US Government Department of Homeland Security https://www.dhs.gov/sites/default/files/publications/PM_15-4344%20U%20and%20T%20Visa%20Law%20Enforcement%20Resource%20Guide%2011.pdf; Data for 2016-2000 shows fewer than 500 grants per year https://travel.state.gov/content/dam/visas/Statistics/Annual-Reports/FY2020AnnualReport/FY20AnnualReport_TableXV_A.pdf

25 Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 and Human Trafficking and Exploitation (Scotland) Act 2015

26 Letter to Sarah Newton MP on improved NRM, IASC, January 2017 <http://www.antislaverycommissioner.co.uk/news-insights/letter-to-sarah-newton-mp-on-improved-national-referral-mechanism/>

6. Continuing to strengthen the criminal justice system response to modern slavery, providing additional funding to increase prosecutions and build policing capability to investigate and respond to organised crime.

SUMMARY: *We welcome the Government's commitment to continue providing additional funding and support to strengthen the criminal justice system response to modern slavery to improve police investigations and increase the number of successful prosecutions. Measures to support victims' engagement with police investigations, increasing training for police officers and understanding of the true nature of the crime as well as updated sentencing guidance is needed.*

Since the initial investment was made in October 2016 into the Modern Slavery Police Transformation Unit,²⁷ a lot of progress has been made by the police forces across the UK. The Unit has provided unparalleled support to police forces across England and Wales providing modern slavery training accredited by the College of Policing and other bespoke materials to raise professional awareness, provided investigative guidance and specialist training for senior investigators, reviewed case files and debriefed investigations in order to share lessons learnt and spread good practice. As our research showed, police activity has surged from 188 live police investigations in November 2016 to 1,821 investigations in December 2019. However, these have not seen a commensurate increase in the number of successful prosecutions.²⁸ In fact, the number of prosecutions under the Modern Slavery Act has remained the same: 295 completed prosecutions in the year ending March 2016 compared to 301 in the year ending March 2020.²⁹

It is a well-known fact that modern slavery investigations are very complex, resource-intensive and lengthy, and require specialist knowledge capabilities and techniques. All require investment and leadership to get them right. In addition to this, our research identified three core reasons why police officers on the frontline were facing challenges in bringing successful prosecutions:

- 1) Lack of victims' engagement with police investigation;
- 2) Lack of understanding about modern slavery among the prosecutors and judiciary
- 3) Low sentencing perpetrators receive in court.

Our report also proposed a number of recommendations as to how the criminal justice outcomes could be improved:

- 1) Putting victims first and providing them with wrap-around support and care that they need to help their recovery. This will help broker their trust and cooperation with the law enforcement agencies in order to bring their traffickers down. Failure to support survivors increases re-trafficking rates and hinders our ability to dismantle the criminal networks managing the abuse because their vital evidence and intelligence is lost.
- 2) Supporting police and NGO partnerships to help secure victims' trust and engagement. Charities that are specialised in providing support to victims are much better placed to assist victims as they emerge from exploitation and begin their recovery. Police often don't have the necessary knowledge and resources to do that. Moreover, victims often don't have trust in authorities, including police. Engaging victims effectively is the right thing to do for their recovery and could transform our prospects of bringing offenders to justice.
- 3) Increasing specialist investigation and victim engagement training for police officers. Despite all the efforts by the Modern Slavery Organised Immigration Crime Unit (formerly Police Transformation Unit), it is clear that gaps in knowledge and skills amongst police officers, prosecutors and the judiciary remain a hindrance to achieving successful prosecutions. It is important to ensure that a particular emphasis is put on understanding the complexities of modern slavery crime, in particular victims' underlying vulnerabilities and the challenges of establishing and maintaining victim engagement during the course of a prosecution.

27 Home Secretary strengthens police response to modern slavery, Home Office, October 2016 <https://www.gov.uk/government/news/home-secretary-strengthens-police-response-to-modern-slavery>

28 "It Still Happens Here: Fighting UK Slavery in the 2020s", Justice and Care and the CSJ, July 2020.

29 IASC Annual Report 2019-2020, September 2020 www.antislaverycommissioner.co.uk/media/1461/ccs207_ccs0520602790-001_iasc_annual-report-2019-2020_e-laying.pdf

- 4) Understanding the true scale and nature of the modern slavery crime in order to allocate proportionate resourcing. Trying to fight modern slavery without accurate data means fighting it blindly providing traffickers with the opportunity to get ahead of the curve. Unless we achieve a better understanding about the scale and nature of it across the UK, we will continue to under-invest and underestimate it. In our report we estimated that there could be at least 100,000 victims of modern slavery in the UK, which is ten times more than the number of victims accessing the NRM. While some in the Government may be nervous about the economic implications of recognising the true scale of the crime and therefore the investment required, there is a serious and wider cost attached to ongoing under-investment too - including through more crime, re-trafficking and benefit fraud.
 - 5) Issuing clear sentencing guidelines on modern slavery to ensure judges and magistrates take a consistent approach to sentencing across courts in England and Wales. The Modern Slavery Act increased the sentence for modern slavery offences to life recognising the gravity and seriousness of the crime. Yet, the reality is bleak and traffickers often get away with low sentences. This must be changed. A message must be sent out that exploitation of one's fellow man is not tolerated in the UK. We are aware that the Sentencing Council has carried out a consultation which finished earlier this year, and we are looking forward to seeing the guidelines published in due course.
7. Introducing new initiatives (as set out in Chapter 6 of the New Plan for Immigration) to provide additional support to victims, improve the Government's ability to prevent modern slavery in the first place, and increase prosecutions of perpetrators.

SUMMARY: *We are encouraged that the Government has recognised a further need to provide additional support enabling victims' engagement with the police to increase successful criminal justice outcomes. We believe Justice and Care's innovative Victim Navigator model is an example for how this can be achieved. We also welcome plans to increase access to mental health support as in practice this is very difficult for victims to obtain. We welcome the plans for a Modern Slavery Prevention Fund and a new Modern Slavery Strategy. Tackling modern slavery at source and in transit countries and strengthening international law enforcement collaboration must remain a priority. Disrupting modern slavery in the UK effectively will require a strategic and holistic cross-governmental approach and we recommend an approach similar to the Modern Slavery Taskforce chaired by the former Prime Minister be deployed to spearhead the delivery of the new strategy.*

Introducing additional support for victims of modern slavery is highly welcome. There is a body of evidence suggesting that the current support system has many flaws which are negatively affecting victims' recovery. We recognise the fact that the Government has invested a significant amount of resource into the NRM reform and is currently in the process of further transformation to develop a needs based approach to victims' recovery. Yet, the NRM support only goes so far. We are encouraged that the Government has recognised a further need to provide additional support to improve victims' mental health, as well as to support victims' engagement with the police to increase successful criminal justice outcomes. Justice and Care saw the same need two years ago following extensive discussions with national police leaders, forces and leading national stakeholders. It, therefore, created an innovative Victim Navigator programme to address the issue.

Victim Navigator Programme

Lack of victim engagement with police modern slavery investigations has been and continues to be the key gap in bringing successful cases to court. Police struggle to build trust with rescued victims and maintain contact as they investigate criminal networks. As a result, many opportunities to secure successful prosecutions and convictions are being lost.

Justice and Care has established the Victim Navigator pilot programme designed to help victims of slavery to rebuild their lives and to help them engage with the criminal justice system. It was launched in summer 2018 and currently covers the following areas: Surrey Police; Essex Police - one focusing on adult victims and one on county lines; Greater

Manchester Police, Metropolitan Police, West Yorkshire Police and UK Border Force/Police Scotland in Glasgow. By summer 2021, two victim navigators will be working at the East Midlands regional level covering five police forces.

A Victim Navigator is a trained independent specialist worker deployed in the heart of police forces in the UK - including border teams and serious organised crime units. The Navigators, who are given unparalleled access to cases, provide specialist knowledge from the start of investigations and support to victims.

Victim Navigators provide the following services:

- **Specialist care and support:** including on rescues, providing access to counselling, legal advice, medical treatment and coordinating repatriations to the country of origin. They are the primary contact for rescued and identified victims linked to Police Forces and investigations.
- **Tactical advice into investigations:** including shaping investigations, reopening filed cases by connecting new evidence, advising on strategy and joining the dots across forces
- **Advocacy:** acting as a trusted bridge between police and victim to increase victim engagement and drive higher conviction rates
- **Systemic change:** including training for key policing leaders and agencies, driving force-wide improvements in modern slavery response and lesson-sharing to shape national strategy with partners such as the National Crime Agency.

An independent evaluation of the programme has found that Victim Navigators uniquely fill a gap in support to slavery victims, increase victim engagement with police, support the progression of modern slavery police investigations and improve victim recovery and wellbeing.

Key figures so far (September 2019 - March 2021):

- Triaged 1,971 modern slavery cases within the police systems
- Supported 365 modern slavery investigations by providing strategic advice
- 172 victims supported with a full wrap-around support plan in place
- 81% of victims helped to access specialist support services and 71% of victims reported improvements in their emotional and mental health
- 88% of the victims who are supported by the victim navigators have chosen to cooperate with the police - compared to 33% on average nationally (MSPTU 2020)
- 104 perpetrators arrested and 54 charged with modern slavery or related offences
- Multiple cases progressing to trial over next 6 months
- 12 further live investigations with case file preparation underway for CPS
- 2 recent convictions and custodial sentences
- 1,893 frontline professionals trained in victim identification and care - with 97% of those trained reporting significantly improved knowledge after the session.

Due to the fact that modern slavery investigations take a long time (on average 12-18 months unless there is a guilty plea) and the Victim Navigator programme is two years old, we are only now starting to see a number of cases moving into trial and the first successful convictions. The number of victims supporting the police investigations is significantly higher than the national average which leads us to believe that the ratio for successful prosecutions will increase proportionately in the coming years. We believe that the Navigator model holds enormous potential for the UK's pursuit of better care and justice outcomes. The final evaluation of the Victim Navigator programme is due in summer 2021 and will provide a rigorous in-depth independent assessment of the impact of the programme.

Mental health support

We are encouraged to see that the Government is putting in place an enhanced needs-based assessment that will ensure that victims receive holistic support, including access to private counselling and mental health support. Victims of slavery often come out of exploitation having suffered severe physical, emotional and/or sexual abuse, and as a result are often traumatised. A 2015 King's College London study found that of 150 people trafficked to the UK from more than 30 different countries, nearly 80% of women and 40% of men were suffering high levels of depression, anxiety and PTSD an average of 16 months after escaping exploitation.³⁰ Their mental health needs must be addressed sooner rather than later. This is even more urgent in cases of sexual exploitation, in particular of children. The less time that passes between the sexual trauma and the initiation of therapy, the better for the child.³¹

In practice, however, access to mental health support and private counselling takes a long time. This has been exacerbated by the changes introduced in the new MSVCC, whereby a victim has to obtain a letter from a GP referring them for first language trauma informed counselling. The intention to provide psychological support in victims' native languages is commendable as it has proven to be much more effective. However, availability of such services often means that victims either have to wait long periods of time, or don't get the support at all.

According to the national standards 75% of people referred to Improving Access to Psychological Therapies programme for people with common mental health problems, services should start treatment within 6 weeks of referral, and 95% should start treatment within 18 weeks of referral.³² However, research by the Royal College of Psychiatrists has found that the waiting between their initial assessment and second appointment puts people on edge with 11% of those on list reverting to A&E services. The majority of people (64%) wait more than four weeks between their initial assessment and second appointment, and nearly a quarter (23%) wait more than three months and one-in-nine (11%) wait longer than six months.³³ There is no doubt that the pandemic has impacted the waiting times even further.

Victims of slavery cannot wait for such long times. Without psychological support, survivors are likely to struggle to maintain engagement with support services, let alone with police investigations. It has been found that trauma affects the way people approach potentially helpful relationships, where individuals with histories of abuse are often reluctant to engage in, or quickly drop out of, many human services.³⁴

It is essential that victims of modern slavery, who have been identified to have mental health needs, are offered psychological support as soon as possible, in order for them to successfully begin their recovery journey, participate in the prosecution of their traffickers without re-traumatisation, and rebuild their lives.

Modern Slavery Prevention Fund

We welcome the Government's announcement to create a modern slavery prevention fund. There is no doubt that prevention is better than cure, and it is important to address the underlying vulnerabilities of potential victims, provide viable opportunities to support their livelihoods at home, as well as focus on dismantling criminal networks to stop them from abusing and exploiting fellow human beings. Prevention programmes are not new and millions of pounds have been spent to address the root causes and structural push factors behind trafficking (e.g., poor socio-economic conditions, illiteracy; lack of employment opportunities; gender issues, etc.), including through the most recent Modern Slavery Innovation Fund managed by the Home Office. However, there is very little understanding of what actually works. Last year the Independent Commission for Aid Impact review of the Government's approach to tackle modern slavery through aid programmes raised concerns about their effectiveness and highlighted the need to do things differently.³⁵

30 Revealing the Hidden Scars of Human Trafficking, King's College London, August 2017 www.kcl.ac.uk/news/spotlight/revealing-the-hidden-scars-of-human-trafficking

31 Caring for Trafficked Persons: Guidance for health Providers, IOM 2009 <https://publications.iom.int/books/caring-trafficked-persons-guidance-health-providers>

32 NHS NICE Service standards <https://www.england.nhs.uk/mental-health/adults/iapt/service-standards/>

33 Press Release, the Royal College of Psychiatrists, October 2020 <https://www.rcpsych.ac.uk/news-and-features/latest-news/detail/2020/10/06/two-fifths-of-patients-waiting-for-mental-health-treatment-forced-to-resort-to-emergency-or-crisis-services>

34 Creating Cultures of Trauma-Informed Care (CCTIC): A Self-Assessment and Planning Protocol, Community connections, April 2009 www.theannainstitute.org/CCTICSELFASSPP.pdf

35 The UK's approach to tackling modern slavery through the aid programme, ICAI, 2020 [icaireview.org.uk/review/the-uks-approach-to-tackling-modern-slavery-through-the-aid-programme](https://www.icaireview.org.uk/review/the-uks-approach-to-tackling-modern-slavery-through-the-aid-programme)

As the new Prevention Fund is being established, a more careful examination of which prevention measures work, under which conditions, and in which contexts is critical in order to move away from a “trial and error” approach to prevention campaigns and towards the design of effective prevention strategies, and comprehensive, evidence-based policies. Listening to the experiences of survivors and including their voices should be a core part of the process.

In our “It Still Happens Here” report we recommended that tackling modern slavery at source and in transit countries must remain a priority for the Foreign, Commonwealth and Development Office, providing sufficient investment in key source countries and global hotspots. In particular, programmes addressing underlying vulnerabilities to modern slavery exacerbated by COVID-19 must be prioritised when allocating funding to the countries most affected by the pandemic. We have also recommended using the soft power of overseas aid, particularly in post-Brexit trade talks, to move key countries forward, as happens with the US Government’s annual Trafficking in Persons (TIP) Report.³⁶ In addition to that we believe that prioritising tackling impunity and strengthening international law enforcement collaboration is vital, especially in the context of Brexit. Consideration must be given to law enforcement cooperation and coordination to pursue traffickers through effective partnerships with the source and transit countries.³⁷

New Modern Slavery Government Strategy

A review of the 2014 Government’s Modern Slavery Strategy is long overdue and, therefore, highly welcome. One of our top recommendations in the “It Still Happens Here” report was calling for the Government to produce a new cross-departmental modern slavery strategy setting out clear responsibilities, actions and outcomes for tackling this crime. The new Strategy needs to take into account the true scale and nature of the crime in the UK to ensure a proportionate response is deployed. It needs to be cross-departmental in nature and spirit reflecting the complexity of the crime to ensure an all-out assault on modern slavery.

Political leadership is vital in order to spearhead the fight against modern slavery. Therefore, we believe that a new strategy needs to be driven at the highest ministerial level. The Taskforce once chaired by the former Prime Minister to tackle modern slavery and exploitation was the right structural approach to achieve cross - Government action. We believe that a similar approach should be deployed to spearhead the delivery of the new strategy, bringing together key departments and the UK’s law enforcement agencies, as well as the Independent Anti-Slavery Commissioner, intelligence services and key delivery partners.

³⁶ It Still Happens Here: Fighting UK Slavery in the 2020s, Justice and Care and the CSJ, July 2020

³⁷ Ibid.

Chapter 4 - Disrupting Criminal Networks and Reforming the Asylum System

Q21: *The UK Government intends to create a differentiated approach to asylum claims. For the first time how somebody arrives in the UK will matter for the purposes of their asylum claim. As the Government seeks to implement this change, what, if any, practical considerations should be taken into account?*

SUMMARY: *The proposed approach to inadmissibility of asylum claims from people who transit through “safe third countries” or people-smuggling is likely to negatively impact efforts to identify and safeguard modern slavery victims. Modern slavery victims who transit to the UK through safe third countries under the control of their trafficker will not be able to seek asylum elsewhere. Some modern slavery victims enter the UK through clandestine means including smuggling, but find they have been deceived into debt bondage or other exploitation. Victims of modern slavery should be exempt from the presumption of inadmissibility and related rapid removal proposals. Immigration officials should be trained to identify potential victims in smuggling contexts.*

National Referral Mechanism (NRM) statistics demonstrate that many victims of modern slavery, indeed the greatest single national cohort, are British nationals who do not need to apply for asylum. However, many non-UK national victims seek and are granted asylum under the current rules. Data published in 2020 indicates that between 1 January 2016 and 31 March 2020 2,333 confirmed victims of modern slavery were granted asylum or humanitarian protection (46% of all victims with a positive conclusive grounds decision in that period).³⁸

There is, therefore, the potential for changes to the rules about admissibility of asylum claims to have a negative impact on victims of modern slavery.

Whilst some non-UK national modern slavery victims arrive in the UK legally for example on visitor visas or student visas or on special overseas domestic worker visas, some may find their exploitation causes them to breach the terms of their visa. Others arrive in the UK through routes which the command paper indicates will make asylum claims inadmissible: travel through safe third countries and/or through people-smuggling. For example, Vietnamese nationals often travel through Russia, China and several EU states³⁹ and victims from African countries (including in the top twenty source countries) are known to be trafficked through the dangerous Central or Eastern Mediterranean routes via Turkey, Greece, Morocco and Spain.⁴⁰

A modern slavery victim who travels through a “safe” third country prior to arriving in the UK is likely to have been under the control of their traffickers during that travel and therefore unable to have sought asylum in that country. For this reason, it is not appropriate to consider their applications for asylum in the UK inadmissible, since it was not a reasonable option for them to have sought asylum elsewhere.

Whilst people smuggling and human trafficking/modern slavery are distinct phenomena, when it comes to individual cases the distinction may be blurred as recognised in the Statutory Guidance under Section 49 of the MSA.⁴¹ Some victims may enter into a smuggling arrangement on the basis that they will work to repay a debt for the cost of travel,

³⁸ Data tables released pursuant to a Freedom of Information request made by ECPAT UK. <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=6fe-8c52a-2290-4058-98da-68c8f1b534bd>

³⁹ Combating modern slavery experienced by Vietnamese nationals en route to and within the UK, IASC, 2017 <https://www.antislaverycommissioner.co.uk/media/1160/combating-modern-slavery-experienced-by-vietnamese-nationals-en-route-to-and-within-the-uk.pdf>

⁴⁰ The top 20 source countries for modern slavery victims in the UK Comparative Report, University of Nottingham Rights Lab, April 2021 <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/resources/reports-and-briefings/2021/april/the-top-20-source-countries-for-modern-slavery-in-the-uk.pdf>

⁴¹ 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, Home Office, March 2021, paragraph 2.55 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/974794/March_2021_-_Modern_Slavery_Statutory_Guidance_EW_Non-Statutory_Guidance_SNI_v2.1_.pdf

rather than paying the smugglers in advance. They may do so believing they will be in control of how they repay that debt only to find on arrival in the UK that they are forced into modern slavery as a form of debt bondage. Such victims have suffered a genuine deception and have been transported for the purpose of exploitation within the international and domestic definition of human trafficking. They are not simply involved in a “smuggling” arrangement, however they would fall within the proposed change making their claim for asylum inadmissible. Many victims are also exploited en route to the UK. Given the different nature of the involvement of third parties, we consider that confirmed modern slavery victims should be able to have their application for asylum judged solely on its own merits rather than on the basis of how they arrived in the UK.

Not only may the proposed rules on inadmissibility impact safeguarding of modern slavery victims through grants of asylum, but the enforcement and implementation of the rules may affect identification of potential victims and safeguarding through the NRM.

There is a risk that the new approach to those arriving in the UK through clandestine means will create a culture of suspicion which hinders efforts to identify victims of modern slavery. Consideration must be given to ensuring that equal priority is given to the duty on immigration officials to identify and safeguard potential victims of modern slavery. Training and guidance for frontline immigration officers in Border Force, UKVI and Immigration Enforcement must adequately equip staff to identify potential victims of modern slavery in the context of apparent smuggling. This is especially important since the European Convention on Action against Trafficking in Human Beings (ECAT) definition of human trafficking can still be met where a victim is identified before the intended exploitation has taken place.⁴² Immigration officials need to be equipped to identify potential victims of modern slavery they encounter who are not found in a situation of exploitation or who may not disclose incidences of exploitation.

We note with concern the recently published research from the Rights Lab at the University of Nottingham that rates of asylum grants for the top 20 source countries for people referred to the NRM show lower rates of asylum grants to confirmed modern slavery victims than to other asylum seekers from those same countries.⁴³ This demonstrates the importance of training and guidance for immigration officials to enhance their understanding of modern slavery. We endorse the Rights Lab recommendation that the Home Office should ensure that vulnerabilities and drivers of modern slavery in countries of origin and transit are adequately considered in individual asylum decisions given their relevance in assessing risks of re-trafficking and past persecution among other factors.

We discuss the need for training for immigration officials as First Responders for the NRM in greater detail in response to proposals in Chapter 6.

We recommend that:

- 1) Legislation and accompanying guidance should establish an exception for confirmed victims of modern slavery to the proposed presumption of inadmissibility of asylum claims by those arriving in the UK via safe third countries and/or by smuggling or who otherwise breach immigration rules.
- 2) Mandatory training and guidance should be put in place for immigration officers in UKBF, UKVI and IE.⁴⁴ This should include cross-reference to the Statutory Guidance under Section 49 of the MSA. Detailed roll out plans should be instigated to ensure all immigration officers complete this training before the new asylum system is implemented. An example of good practice is the modern slavery training standards framework launched in September 2020 by Skills for Care, St. Mary's University and the Snowdrop Project.⁴⁵
- 3) Training and guidance should at a minimum cover:
 - a) Indicators of modern slavery, including the possibility that victims may have arrived in the UK through clandestine means and that the intended exploitation may not yet have occurred.

42 Ibid. Paragraphs 2.23 & 2.24

43 The top 20 source countries for modern slavery victims in the UK Comparative Report, University of Nottingham Rights Lab, April 2021 <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/resources/reports-and-briefings/2021/april/the-top-20-source-countries-for-modern-slavery-in-the-uk.pdf>

44 In our 2020 report It Still Happens Here we recommended the introduction of early mandatory modern slavery training with modern slavery courses embedded within professional qualifications and inductions.

45 Modern Slavery Training Standards, Skills for Care, St. Mary's University and The Snowdrop Project, September 2020 <https://www.skillsforcare.org.uk/Learning-development/ongoing-learning-and-development/Modern-slavery/Modern-Slavery.aspx>

- b) Protocols for screening and safeguarding potential victims when encountered on arrival, through enforcement action or on application for asylum.
 - c) A trauma-informed approach to potential victims, and an understanding of the matters that can impact a victims' disclosure of their situation, and that they may not even realise they are victims.
- 4) Guidance and training on the new approach to admissibility of asylum claims should include reference to the duty to identify and safeguard victims of modern slavery and the Statutory Guidance under Section 49 of the Modern Slavery Act.

Q25: Please use the space below to give further feedback on the proposals in chapter 4. In particular, the Government is keen to understand:

- (a) If there are any ways in which these proposals could be improved to make sure the objective of overhauling our domestic asylum framework is achieved; and
- (b) Whether there are any potential challenges that you can foresee in the approach being taken around asylum reform. Please provide as much detail as you can.

SUMMARY: We are responding to this question only in respect of its impact on identifying, safeguarding and supporting victims of modern slavery. As outlined above there is the potential for the presumption of inadmissibility and the associated rapid removal to negatively impact victims of modern slavery whose entry to the UK is controlled by third parties. Overseas processing of asylum claims risks re-traumatising victims and hindering their access to specialist medical, psychological and legal support. Plans to increase asylum accommodation and reception centres provide an opportunity for reviewing the suitability of such accommodation for victims of modern slavery.

1. Ensuring that those who arrive in the UK, having passed through safe countries, or have a connection to a safe country where they could have claimed asylum will be considered inadmissible to the UK's asylum system.

We have highlighted the potential challenges and our recommendations for improvement in this policy as it applies to victims of modern slavery in answer to the specific question above. In summary, there is the potential for this policy to hinder the identification and safeguarding of victims of modern slavery. We recommended that victims of modern slavery should be exempt from the presumption of inadmissibility since their entry via a safe country and/or through smuggling may have been arranged and controlled by a third party for the purpose of exploitation. We also recommend training and guidance for immigration officials to equip them better to identify and safeguard potential modern slavery victims in the context of apparent smuggling.

2. Seeking rapid removal of inadmissible cases to the safe country from which they embarked or to another third country.

Under ECAT potential victims of modern slavery are protected from removal from the UK during the NRM process. We recommend in response to questions on Chapter 6 that this protection be included in legislation. Legislation and guidance governing the proposed policy of seeking rapid removal for inadmissible cases should also state clearly that potential victims of modern slavery are protected from removal (subject to the public order exception) during the NRM.

Furthermore, for the same reasons that we recommend above that victims of modern slavery should be exempt from the new presumption of inadmissibility of asylum claims on the basis of their route to the UK, we also recommend that confirmed victims of modern slavery should be exempt from the policy of seeking rapid removal except on public order grounds.

3. Introducing a new temporary protection status with less generous entitlements and limited family reunion rights for people who are inadmissible but cannot be returned to their country of origin (as it would breach international obligations) or to another safe country.

As stated above we recommend that victims of modern slavery should be exempt from the presumption of inadmissibility.

4. Bringing forward plans to expand the Government's asylum estate. These plans will include proposals for reception centres to provide basic accommodation while processing the claims of inadmissible asylum seekers.

Article 12 of ECAT requires the Government to provide potential victims of human trafficking with "appropriate and secure accommodation". The explanatory report on ECAT explains that the convention "specifies that accommodation must be "appropriate and secure" as victims need adapted and protected accommodation in which they can feel safe from the traffickers."⁴⁶ This obligation, and the specific needs of victims of modern slavery should be considered when developing the proposed reception centres and other asylum accommodation.

We recommend that in expanding the Government's asylum estate, the Government take this opportunity to review the suitability of all asylum accommodation for potential victims of modern slavery and develop new guidance and protocols to ensure that victims of modern slavery are housed in appropriate and safe accommodation that will promote their recovery and minimise re-traumatisation.

5. Making it possible for asylum claims to be processed outside the UK and in another country.

We are concerned that removing victims of modern slavery outside the UK for their asylum claims to be processed could be re-traumatising for victims by exerting high levels of control over the individual as their trafficker also had. Removing such victims outside the UK may make it more difficult for them to access the specialist support, counselling and medical care that they may need for their recovery. Moreover, it will make it more difficult for these victims to engage with police in pursuit of their traffickers.

The impact of such a policy on modern slavery victims' recovery and engagement in police investigations or court proceedings should be assessed thoroughly before any plans are developed to remove modern slavery victims from the UK for processing of asylum claims.

⁴⁶ Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, 2005 <https://rm.coe.int/16800d3812>

Chapter 5 - Streamlining Asylum Claims and Appeals

Q30: Please use the space below to give further feedback on the proposals in chapter 5. In particular, the Government is keen to understand:

- (a) If there are any ways in which these proposals could be improved to make sure the asylum and appeals system is faster, fairer, and concludes cases more effectively;*
- (b) Whether there are any potential challenges that you can foresee in the approach the Government are taking around streamlining appeals.*

SUMMARY: *The proposal that failure to raise modern slavery concerns during the enhanced “one-stop” process would be counted against the credibility of a victim runs the risk of excluding genuine victims of modern slavery. Similarly, proposed reforms to the asylum system which emphasise “good faith”, early disclosure and give less credence to “late” claims do not take full account of the impact of trauma on how slavery victims present to the authorities. It must be possible for claims of modern slavery to be raised subsequent to the “one-stop” process, and guidance about both the “one-stop” process, assessing “good faith” and treatment of later claims must highlight the possibility that the claimant may have valid reasons for not having raised the matter earlier. Proposals for modern slavery issues to be included in appeals to the First Tier Tribunal and a fast track appeals process lack clarity, but we are concerned that such processes could damage the integrity and credibility of the NRM if victims with live immigration cases or in detention are treated differently than other victims.*

1. Developing a “Good Faith” requirement setting out principles for people and their representatives when dealing with public authorities and the courts, such as not providing misleading information or bringing evidence late where it was reasonable to do so earlier.

We have serious concerns that the five principles of “good faith” set out in the consultation will negatively impact victims of modern slavery and are insufficiently nuanced to address the situation of victims.

Victims of modern slavery may find themselves having overstayed or breached the terms of their visa by virtue of the actions of their exploiter. Similarly, fear of the authorities instilled by traffickers can cause victims not to make immigration or modern slavery claims immediately after they escape from exploitation. We are concerned that principles which assume anyone who overstays or does not make an asylum claim as soon as possible has not acted in good faith will negatively impact victims of modern slavery and how their immigration or other claims are treated.

Similarly, the principle that people seeking protection should “always tell the truth” is insufficiently nuanced to take account of the impact of trauma on victims of modern slavery that may result in confused and inconsistent narratives. Statutory Guidance under Section 49 of the Modern Slavery Act identifies that “Victims’ early accounts may be affected by the impact of trauma. This can result in delayed disclosure, difficulty recalling facts, or symptoms of post-traumatic stress disorder. Victims may also be reluctant to self identify for a number of other reasons that can make understanding their experiences challenging”.⁴⁷ There is a risk that if, as a result of trauma, victims’ provide confused or inconsistent accounts, do not initially identify as victims or avoid disclosing traumatic experiences leading to late identification, they may be considered to have fallen short of the proposed “good faith” requirement.

We recommend that:

- 1) The principles of the “good faith” requirement include acknowledgement of the potential impact of trauma and exploitation on a person’s ability to meet those “good faith” principles.

⁴⁷ Modern Slavery Statutory Guidance Op.Cit. paragraph 13.1. The causes and impact of trauma and vulnerability on victims’ ability to provide clear and consistent narratives of their exploitation is expanded in subsequent paragraphs.

2) Guidance on interpreting and applying the proposed “good faith” requirement should refer to the potential impact of trauma on victims of modern slavery and the need to take this into account following the example of the Statutory Guidance under Section 49 of the MSA on assessing the credibility of victims: “Due to the trauma of modern slavery, there may be valid reasons why a potential victim’s account is inconsistent or lacks sufficient detail. Staff at the SCA should have account of any relevant factors set out in the Working with Vulnerable People section when making a decision as this section outlines some of the challenges victims may face in providing a clear and consistent account of their experiences. The SCA should take these reasons into account when considering the credibility of a claim.”⁴⁸

2. Introducing an expanded “one-stop” process to ensure that asylum claims, human rights claims, referrals as a potential victim of modern slavery and any other protection matters are made and considered together, ahead of any appeal hearing. This would require people and their representatives to present their case honestly and comprehensively - setting out full details and evidence to the Home Office and not adding more claims later which could have been made at the start.

The Section 49 Statutory Guidance recognises that genuine victims may not initially disclose their exploitation, or may not identify themselves as victims for a variety of reasons.⁴⁹ Many victims are unlikely to be familiar with terms such as human trafficking or modern slavery and even less likely to be aware of the NRM process. For these reasons victims may not raise modern slavery related matters during the “one-stop” process. The proposal that failure to raise modern slavery concerns during the “one-stop” process would be counted against a victim in assessing the credibility of the claim runs the risk of excluding genuine victims of modern slavery despite the Section 49 Statutory Guidance recognising that there may be valid reasons for delayed disclosure.

Victims may also not have access to good quality legal advice about the NRM since legal aid is currently not available for advice on the NRM prior to a positive reasonable grounds decision. We welcome the proposal to provide additional legal aid for advice about the NRM for people receiving legal advice on immigration issues under legal aid. However, support workers caring for victims of modern slavery have told us of victims who have received poor quality initial legal advice which has negatively impacted their case.

We recommend that:

- 1) It must be possible for claims of modern slavery to be raised subsequent to a “one-stop” process.
- 2) Guidance about both the “one-stop” process and treatment of later claims must highlight the possibility that the claimant may have valid reasons for not having raised the matter earlier.
- 3) Immigration officials should be given mandatory training to ensure that all possible steps are taken to encourage and enable victims to disclose information which points to modern slavery (including where exploitation has not yet taken place) and to equip staff to be more effective in identifying victims of modern slavery. This should include routinely asking questions that will encourage disclosure of indicators of modern slavery during asylum interviews and training staff to identify those indicators without a victim necessarily using terminology of exploitation, human trafficking or modern slavery. The modern slavery training standards framework launched by Skills for Care et al in 2020 provides an example of good practice in training for professionals interacting with potential victims.⁵⁰
- 4) Expanded legal aid for legal advice about the NRM should be provided by lawyers who are experts in the NRM and modern slavery.

48 Ibid. paragraph 14.6

49 Ibid. paragraph 13.11

50 Modern Slavery Training Standards, Skills for Care, St. Mary’s University and The Snowdrop Project, September 2020 <https://www.skillsforcare.org.uk/Learning-development/ongoing-learning-and-development/Modern-slavery/Modern-Slavery.aspx>

3. Considering introducing a ground of appeal to the First Tier Tribunal for certain Modern Slavery cases within the “one-stop” process.

We recognise the desire to speed up the process by which claims made within the asylum system can be processed. However, the separation of modern slavery decisions under the NRM from immigration decisions is essential to the integrity and credibility of the modern slavery system. Allowing some victims a right of appeal on modern slavery matters to the First Tier Tribunal would blur that distinction.

It is not clear in the command paper which decisions could be appealed through this proposed mechanism, but allowing a right of appeal of an NRM decision to the First Tier Tribunal for some victims because they also have an ongoing immigration case would create a two-tier NRM. It would leave potential victims without an ongoing immigration case, including all British national victims (who are the largest single national cohort referred to the NRM) fewer routes to appeal decisions than those with ongoing immigration claims. Potential victims should have equal access to appeal processes in relation to NRM decisions irrespective of whether they have other immigration claims. It also raises questions about how fairness of treatment of appeals of modern slavery decisions will be assured if different systems and different forums will be used to consider those appeals.

4. Introducing a new fast-track appeal process. This will be for cases that are deemed to be manifestly unfounded or new claims, made late. This will include late referrals for modern slavery insofar as they prevent removal or deportation.

We understand the Government’s desire for appeals from detention, where claimants are facing removal, to be heard swiftly. We recognise that delays in NRM decision-making mean that for 2019, in which there was a significant increase in NRM referrals from immigration detention, the vast majority of those receiving a positive reasonable grounds decision (94%) are still waiting for a conclusive grounds decision.⁵¹ However, these delays also urge caution about presuming the increase in referrals reflects a rise in false modern slavery claims as the cases have not yet been conclusively determined.

False claims of modern slavery need to be identified as they contribute to delays and suspicion which negatively impacts genuine victims. However, a fast track process carries the risk that genuine victims will be overlooked due to a lack of rigorous investigation of their case or a built-in suspicion that they may be making a spurious claim. As mentioned earlier, there can be valid reasons for issues of modern slavery to be raised at a late stage in someone’s immigration case. Such claims are not necessarily unfounded or vexatious. Protocols and guidance governing this process should, therefore, include information about the potential valid reasons for late disclosure of modern slavery and allow for full and proper consideration of the evidence regarding the possibility that the person is a victim of modern slavery.

It is not clear what modern slavery decisions will be considered under the proposed fast track process (whether it would be for all NRM decisions, appeals of negative RG or CG decisions or other decisions such as public order grounds exclusions). As indicated above we have serious concerns about any proposal that would create a separate process for deciding whether or not a person is a victim of modern slavery outside the NRM applicable only in certain cases. In order to maintain the integrity and credibility of the NRM all decisions about whether or not a person is a victim of modern slavery should be made as part of one integrated system on the basis of the same criteria, independently of any immigration case. This should include having the same appeals processes equally accessible and offering assurance of equal treatment for all victims. Any proposal for a fast track process for potential victims in immigration detention that would require the involvement of the SCA risks causing delays in the consideration of other NRM cases, which is concerning especially since delays to reasonable grounds decisions lead to delays in victims accessing support.

51 Issues raised by people facing return in immigration detention, Home Office, 16 March 2021 <https://www.gov.uk/government/publications/issues-raised-by-people-facing-return-in-immigration-detention/issues-raised-by-people-facing-return-in-immigration-detention>



The Centre for Social Justice
Kings Buildings, 16 Smith Square
Westminster, SW1P 3HQ
t: +44 (0) 20 3150 2326
Twitter: @csjthinktank
www.centreforsocialjustice.org.uk



Justice and Care
Suite 139, 210 Upper Richmond Road
London, SW15 6NP
t: +44 (0) 20 3959 2580
Twitter: @justiceandcare
www.justiceandcare.org