

DECEMBER 2021

# THE NATIONALITY AND BORDERS BILL

## IMPACT ON SURVIVORS OF MODERN SLAVERY

### PARLIAMENTARY BRIEFING:

Briefing on the Nationality and Borders Bill compiled by *After Exploitation*, with support from *Focus on Labour Exploitation* (FLEX) and the *Anti Trafficking Monitoring Group* (ATMG).

# EXECUTIVE SUMMARY

## PART 5 IN THE NATIONALITY AND BORDERS BILL WOULD:

### RESTRICT SUPPORT

A majority of survivors have been forced to commit criminal activity as a result of their exploitation. This activity could include anything from marijuana cultivation to pickpocketing. Yet, Clause 62 would see survivors of slavery barred from support if they have a criminal conviction of 12 months or more. The so-called 'Public Order' exemption could also affect survivors criminalised for their immigration status, under preceding sections of the Nationality and Borders Bill.



### INTRODUCE TRAUMA DEADLINES

Clauses 57 and 58 in the Nationality and Borders Bill would penalise victims of slavery for not sharing details of their exploitation 'fast enough'.

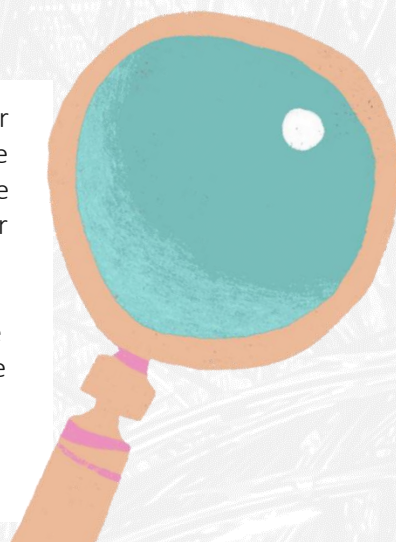
Under the changes, even modern slavery survivors with an asylum or humanitarian protection claim, who could be recognised as 'genuine' by the Home Office, would be denied support such as safe housing or counselling. Survivors issued 'Trafficking Information Notices' are at risk of missing out if they do not reveal details of their exploitation by a set deadline. Victims who struggle to instantly disclose due to trauma, lack of legal and mental health support, or feared reprisals from traffickers, may not be eligible for help despite facing significant barriers to reporting.



### TREAT SURVIVORS WITH SUSPICION

Under Clause 59, slavery survivors would be put under more scrutiny, earlier in their recovery journey. Changes to the first decision making stage of trafficking claims will see survivors forced to meet even higher thresholds of evidence, almost immediately, before they have even accessed a lawyer, translator or advocate to help evidence their experiences confidently.

The New Plan for Immigration policy paper also outlines plans to grant new powers to the Police, Home Office, and other first responders, to reject trafficking claims outright before claimants have had access to support. The changes are proposed despite a vast majority of survivors who claim to have been trafficked being deemed as 'genuine' (89% in final, and 92% in initial-stage, decisions).



**"I AM CONCERNED THAT THESE CHANGES  
WOULD MAKE THE IDENTIFICATION OF VICTIMS  
OF MODERN SLAVERY HARDER"**

**INDEPENDENT ANTI SLAVERY COMMISSIONER,  
DAME SARA THORNTON**

## ABOUT SLAVERY

Modern slavery is defined as severe exploitation for someone else's commercial or personal gain. Severe exploitation is present in almost every industry in the UK including hospitality, sex work, construction, domestic work, and agriculture<sup>1</sup>.

Survivors are often severely psychologically, physically or sexually abused by traffickers as a means of maintaining control<sup>2</sup>. During recovery, exploited people face increased risk of suicide attempts, long-term and severe depression, anxiety and Post-Traumatic Stress Disorder (PTSD)<sup>3</sup>, health complications as a result of sexually transmitted infections<sup>4</sup>, and dependency or withdrawal where traffickers use alcohol and drugs as tools of coercion<sup>5</sup>. Delays in support can significantly hamper survivors' ability to begin recovery.

Even when survivors are recognised as being trafficked, significant barriers already prevent them from accessing the safe housing, counselling, financial subsistence and caseworkers they're entitled to.<sup>6,7</sup> If introduced, measures under **Part 5 of the Nationality and Borders Bill** would make this worse.

In the UK, a majority of modern slavery survivors are unlikely to ever be identified by UK authorities at all.<sup>8</sup> Last year, 2,178 suspected survivors came into contact with First Responders but were never passed on for support.<sup>9</sup> The referral stage is a vital point in the survivor journey, and poor referral practices threaten to see victims miss out on support or even be punished due to their immigration status. Between January 2019 and September 2020, as many as 2,914 individuals were wrongly held in immigration detention under 'Immigration Powers' and later recognised by the Home Office as potential trafficking victims eligible for protection and support<sup>10</sup>.

We are concerned that the Nationality and Borders Bill would make life even harder for survivors. Last year, only 3,084 victims of trafficking were recognised by the UK government at the final trafficking decision-making stage<sup>11</sup>, falling significantly short of identifying the 100,000 people whom the Centre for Social Justice estimates are currently living in settings of exploitation<sup>12</sup>. The Government must halt attempts to 'toughen up' an already hostile system through Part 5 of the Nationality and Borders Bill. Instead of seeking to 'combat' an unevicenced rise in 'vexatious trafficking claims'<sup>13</sup>, to the detriment of survivors, the Government must judge progress by how many more, not fewer, survivors of slavery it is able to identify.



# ABOUT THE BILL

Many column inches have been dedicated to the Nationality and Borders Bill, which would allow for offshore processing and further criminalisation of asylum seekers.<sup>14,15</sup> However, relatively little editorial attention has been paid to **Part 5 of the Bill**, despite the seismic impact it would have on survivors of modern slavery. Among the changes in Part 5 are restrictions on support, the creation of new ‘trauma deadlines’ which would penalise survivors for ‘late’ disclosure, and the introduction of needless new barriers to recognition and support. Under Part 5, the overall proportion of survivors being identified and accessing support may fall, due to measures which would make the trafficking determination process stricter.

Despite condemnation from more than 110 specialist non-profit organisations,<sup>17</sup> and the UK’s Independent Anti Slavery Commissioner,<sup>19</sup> the Government has retained Part 5 of the Nationality and Borders Bill at Third Reading.

## FACT CHECK: “ABUSE OF THE SYSTEM”?

The Government has justified moves to make the identification system for recognising survivors, called the ‘National Referral Mechanism’ (NRM), even ‘tougher’ via Part 5 of the Nationality and Borders Bill. Their justification is that the NRM is being “abused” as a “means of disrupting immigration proceedings”.<sup>20</sup>

On the contrary, detention data provided by the Home Office illustrates that most trafficking referrals made from immigration detention (89%) are successful at the first stage of decision making.<sup>21</sup> More widely, even NRM rejections are likely to be overturned. Last year, 78% of reconsiderations were positive.<sup>22</sup>

Whilst the Government has not yet released data to substantiate claims that vexatious trafficking referrals are rising, what little data we do have access to seems to indicate that error more often lies with decision makers than with referral subjects.

We are concerned that, rather than addressing shortcomings in decision making, the Government’s approach is to make an unfair system even tougher.

Many charities, including the Helen Bamber Foundation and Detention Action, assert that more vulnerable people are being detained since the introduction of the 2016 Adults At Risk (AAR) policy. Under this policy, the Home Office is not required to ‘proactively’ gather evidence before deciding whether or not it is inappropriate to detain a vulnerable individual. Under this policy, a growing number of potential survivors of trafficking have been wrongfully detained year-on-year.<sup>23</sup> Last year, Home Office safeguards only intervened in 3% of detention referrals,<sup>24</sup> despite many going on to be recognised by the Home Office’s own decision makers as having ‘reasonable grounds’ in a trafficking case or being survivors of state-sponsored torture.<sup>25</sup>

Given the worrying number of survivors who are failed by the State repeatedly before being identified, we believe that Home Office policy – not survivors – are responsible for the rise in trafficking referrals after a period of detention has taken place.

# AREAS OF CONCERN

First, we are concerned that Part 5 contains a series of measures which would see a **stricter determination process** for survivors of slavery introduced. Tougher criteria in the first decision making stage of the trafficking determination process (Clause 59) would affect survivors' access to the most urgent forms of support. Meanwhile, survivors who are exploited more than once, and have been wrongly denied support as part of a recovery and reflection period previously, would miss out on further assistance under moves to prevent survivors from a second chance at such support (Clauses 60 and 61).

Secondly, the introduction of a **trauma deadline** for survivors would see victims penalised in the modern slavery determination process for not providing evidence 'fast enough' (Clauses 57 and 58).

Lastly, we are worried by attempts to **restrict support** for certain 'types' of survivors. Part 5 introduces the power to ban support for survivors who have received a sentence of 12 months or more on the grounds of 'public order' (Clause 62), despite the high number of survivors forced to undertake criminalised activity as a result of their trafficking. Meanwhile, new powers to provide immigration leave (Clause 64) and a minimum of 12 months' support to some confirmed victims of trafficking (Clause 63) may seem positive on the surface, but instead represent a downgrading of support by allowing the Government to allocate rights to survivors on a 'case-by-case' basis. Withdrawal from the EU Trafficking Directive (Clause 67) would also allow Government to avoid existing levels of accountability, under international law, should it wish to further roll back survivor entitlements.

## 1. STRICTER SYSTEM

Under Clause 59, a stricter threshold would be applied to decide whether someone can access entitlements such as safe housing and counselling on the basis of modern slavery. Under Clause 59, decision makers would be asked to consider whether someone "is" a victim of trafficking rather than "may be" one in the first instance before granting support.<sup>26</sup> In effect, the Bill would raise the threshold that survivors would have to meet at the first ('Reasonable Grounds') stage, so that more evidence may be asked of victims almost immediately after exploitation. In effect, survivors could face higher levels of scrutiny earlier on in their recovery journey, before they have had guaranteed access to advocacy.

Trafficking is recognised as a complex crime for decision makers to contend with, due to the range of acts falling under the label of slavery and persisting ambiguity around its prevalence and nature.<sup>27</sup> For this reason, the determination process can be difficult for both survivors and decision makers to navigate confidently.

Despite a Government promise to roll out pre-referral support, including advocacy, for survivors in 2017, there is still no state-funded specialist support available to potential victims of trafficking to support disclosure of trafficking and ensure high-quality information is shared as part of a survivors' National Referral Mechanism (NRM) referral.<sup>28</sup> As a result, survivors overcome significant odds by having their case considered and securing a positive first stage decision under the current system, as they have no entitlement to early legal advice. We oppose moves to make this process even more hostile towards victims.

Currently, the 'Reasonable Grounds' decision is the 'gateway' to help allocated to survivors of modern slavery to access support, such as safe housing, in the immediate aftermath of exploitation.<sup>29</sup> A failure to receive immediate support of this nature increases survivors' risk of suffering reprisals from criminal gangs, destitution, re-trafficking, and other serious mental and physical harms. For this reason, it is vital that survivors are able to access entitlements once they meet the existing threshold, that it is 'reasonable' to believe they have been trafficked.

In written evidence, the [Human Trafficking Foundation](#) explains: *"Barriers to positive identification by First Responders are already reported. For instance... where police officers have not recognised victims of trafficking listing delays in identification, poor safeguarding approaches, reluctance to identify (due to workload), and viewing victims as offenders as issues uncovered by their inspections."*<sup>30</sup>

We oppose this clause, as academics and those working on the front-line have already documented a widespread culture of disbelief within the Home Office.<sup>31,32,33</sup> Instead of addressing the barriers facing survivors who are scared or practically unable to disclose abuse, these planned reforms intend to put survivors under even higher levels of scrutiny before they have had the time to evidence a case.

Meanwhile, under [Clauses 60 and 61](#), there would be no entitlement to a "further recovery" period after a first stage trafficking decision is made. In written evidence, the Anti Trafficking and Labour Exploitation Unit questions "what situation this clause is designed to address", as those with a positive reasonable grounds decision "have no need for a further reasonable grounds decision".<sup>34</sup> We are concerned that the creation of this clause may be to purposefully or inadvertently tighten the already inaccessible reconsideration process for survivors who see their case wrongly rejected. Last year, only 188 rejected reasonable grounds decisions last year were successfully reconsidered, and a significant majority (78%) were later positive.<sup>35</sup>

In effect, [Clauses 60 and 61](#) could also prevent survivors, deemed ineligible for support entitlements by the Home Office during their Recovery Needs Assessment, from later being able to access the help they were denied upon first asking. These measures may also harm individuals who have been exploited on more than one occasion. The explanatory notes of the Bill highlight that the clauses' intent is to ensure "only one period of recovery would be provided to a potential victim".<sup>36</sup> However, the clauses do not contain explicit safeguards to prevent re-trafficked individuals from missing out on support if they are subjected to exploitation more than once.



## 2. TRAUMA DEADLINE

The Nationality and Borders Bill, in its current form, creates a new obligation on survivors to provide evidence of their trauma and exploitation by a ‘deadline’ dictated by ‘Trafficking Information Notices’. Under Clause 57 and 58, it is stipulated that these notices issued to potential survivors by the Home Office “*will require many foreign national victims of trafficking to self-identify and communicate that they are a victim of slavery within a fixed time period, with a failure to do so or late declaration seen as damaging the individual’s credibility*”.<sup>37</sup>

Under Part 5, Home Office decision makers and judges would be asked to consider whether delayed disclosure is a result of “*unmeritorious claims*” submitted in ‘bad faith’.<sup>38</sup> This significant change is proposed despite overwhelming psychological literature, and testimony from front-line experts, attesting to the common memory recall, delay and loss amongst survivors of extreme abuse and exploitation.<sup>39</sup> The charity sector has largely condemned the move to punish survivors for late disclosure<sup>40</sup>:

**“IT IS NOT REASONABLE FOR A MODERN SLAVERY SURVIVOR TO BE ABLE TO DISCLOSE THEIR EXPERIENCES AT THE ‘RIGHT’ TIME. THERE MAY BE A MYRIAD OF REASONS FOR DELAYED DISCLOSURE.**

**TRAUMA CAN HINDER IMMEDIATE AND COHERENT RECALL OF EVENTS, DATES, DETAILS, AND SO ON.”**

THE WEST MIDLANDS ANTI SLAVERY NETWORK

In the first sitting on the Public Bill Committee for the Bill, politicians questioned whether it was feasible or fair to put a time limit on disclosure for survivors. In evidence, Dave Kirby, Assistant Chief Constable of Derbyshire Police, echoed these concerns and explained that survivors “*are under a huge amount of duress including their families being threatened. If people are told [by their traffickers] not to claim that they are a victim ...and then at some point change their minds for whatever reason, I think that needs to be allowed and not counted against them.*”<sup>41</sup> By its very nature, trafficking is a traumatic, sometimes materially dangerous, crime to disclose. Survivors must not be punished further for not meeting a new and arbitrary ‘deadline’.

### 3. BAN ON SUPPORT

A number of clauses in Part 5 would restrict support for survivors. Under [Clause 62](#) of the Nationality and Borders Bill, trafficking victims would not be considered by decision makers if they have a criminal sentence of 12 months or more. This change is set to be enacted via ‘clarification’ of public order definition. The threshold for ‘public order’ is low, and applies to much broader non-violent offences which may carry a sentence of 12 months or more such as Possession with Intent to Supply which is often related to forced labour.<sup>42</sup>

The public order exemption in [Clause 62](#) is deeply concerning, as criminal exploitation is the most common type of exploitation recorded in the UK. Last year, 49% (n=5,158) of trafficking cases reported to the Home Office included a criminal element.<sup>44</sup>



Whilst it is possible for victims of trafficking to raise a section 45 defence in criminal proceedings, on the basis that a crime was committed as a result of coercion, there is no evidence of the frequency with which this mechanism is used in practice. In reality, data shows that survivors of criminal exploitation, such as drug cultivation and county lines, are routinely missed by practitioners until a significant time after a sentence is served.<sup>46</sup> Under Part 5 of the Nationality and Borders Bill, these individuals would be at risk of deportation and removal of support, despite being failed by the UK state.

It is vital that the **Government** is able to ‘right wrongs’ where survivors of criminal exploitation have been failed in this way, but [Clause 62](#) in the Nationality and Borders Bill would make it incredibly challenging for survivors to secure recognition of their exploitation after receiving a sentence. Equally, there is a politically inconvenient but robustly documented link between criminal activity more generally and past victimisation.<sup>47</sup>

Revoking support for victims of criminal exploitation may change the typology of trafficking in the UK, creating an incentive for exploiters to target people with criminal records in the knowledge that they are barred from being identified as a victim. We are also worried about the moral implications of differentiating between ‘deserving’ and ‘undeserving’ survivors. Survivors who have engaged with criminalised activity, likely as a result of crimes committed against them and the State’s failure to intervene, must not be punished further through withdrawal of support.



Meanwhile, [Clause 63](#) introduces new provisions on the support that survivors of slavery can access. At first glance, the attempt to enshrine survivor support in primary legislation appears positive. However, in practice, the standard of support outlined in the Bill is much lower than those currently on offer to victims of modern slavery. Under [Clause 63](#), survivors would have access to ‘assistance and support’ only when it is “necessary” for “recovery from any physical, psychological or social harm” caused by exploitation.<sup>48</sup> Furthermore, it is not outlined what support survivors would have a legal right to access.<sup>49</sup>

It is not sustainable to create a system in which survivors of slavery cannot be *guaranteed* support if they come forward. We are concerned that enshrining a ‘case-by-case’ support system in law would prevent some survivors from accessing help, creating a discrepancy in recovery outcomes for victims.

Equally concerning is [Clause 64](#), which states that limited leave to remain, a temporary immigration status usually lasting 30 months, is “not necessary” for survivors where the Home Office decides support can be offered in a country or territory where a person is a “national or citizen” or a country that simply enters into an agreement with the UK to accept them. Whilst the Bill allows for some survivors to be granted short-term leave where it is necessary to avoid “harm arising from relevant exploitation”, “seek compensation” or “co-operate” with criminal investigations or proceedings, the Bill does not guarantee immigration protection for those recognised as survivors of modern slavery.

Home Office guidance on issuing discretionary leave has already been updated to reflect the wording in [Clause 64](#), with sections outlining considerations for survivors seeking compensation, supporting and investigation, or facing harm. At best, [Clause 64](#) is unnecessary in light of the guidance already released. At worst, [Clause 64](#) would see survivors forced to live with even greater immigration insecurity. In written evidence, the Anti Trafficking and Labour Exploitation Unit emphasises that the Clause would harm survivor outcomes. “[Our clients] do not feel safe and able to begin meaningful recovery until the threat of removal is gone and the dignity of legal status for them to live independently is awarded.”<sup>50</sup>

### **New clause on sex trafficking**

At Report Stage in the Commons, [New Clause 3](#) was introduced with the goal of exempting survivors of sexual exploitation from the measures in Part 5 of the Bill.<sup>52</sup> Whilst this Clause did not secure a majority, we are concerned that any amendments which seek to secure exemptions or to create an offense dependent on the primary ‘type’ of exploitation disclosed would have the unintended consequence of further narrowing access to identification and support by creating the impression that some types of disclosed exploitation are worse than others. In reality, sexual abuse is a common tactic employed by traffickers to control and coerce survivors of all forms of exploitation, meaning that a survivors’ logged exploitation ‘type’ may not correspond to the nature of abuse they have suffered.<sup>54</sup> Equally, a majority of victims are exploited in multiple ways, and the traumatic nature of sexual exploitation can result in a delayed disclosure of this form of exploitation. All types of trafficking can cause horrific trauma and access to identification and specialist support must not be narrowed further.

# THE REST OF THE BILL

A number of wider asylum changes in the Nationality and Borders Bill would make it even harder for vulnerable people, including trafficking victims, to disclose their experiences of abuse or access meaningful help.

## Penalties for asylum seeking survivors

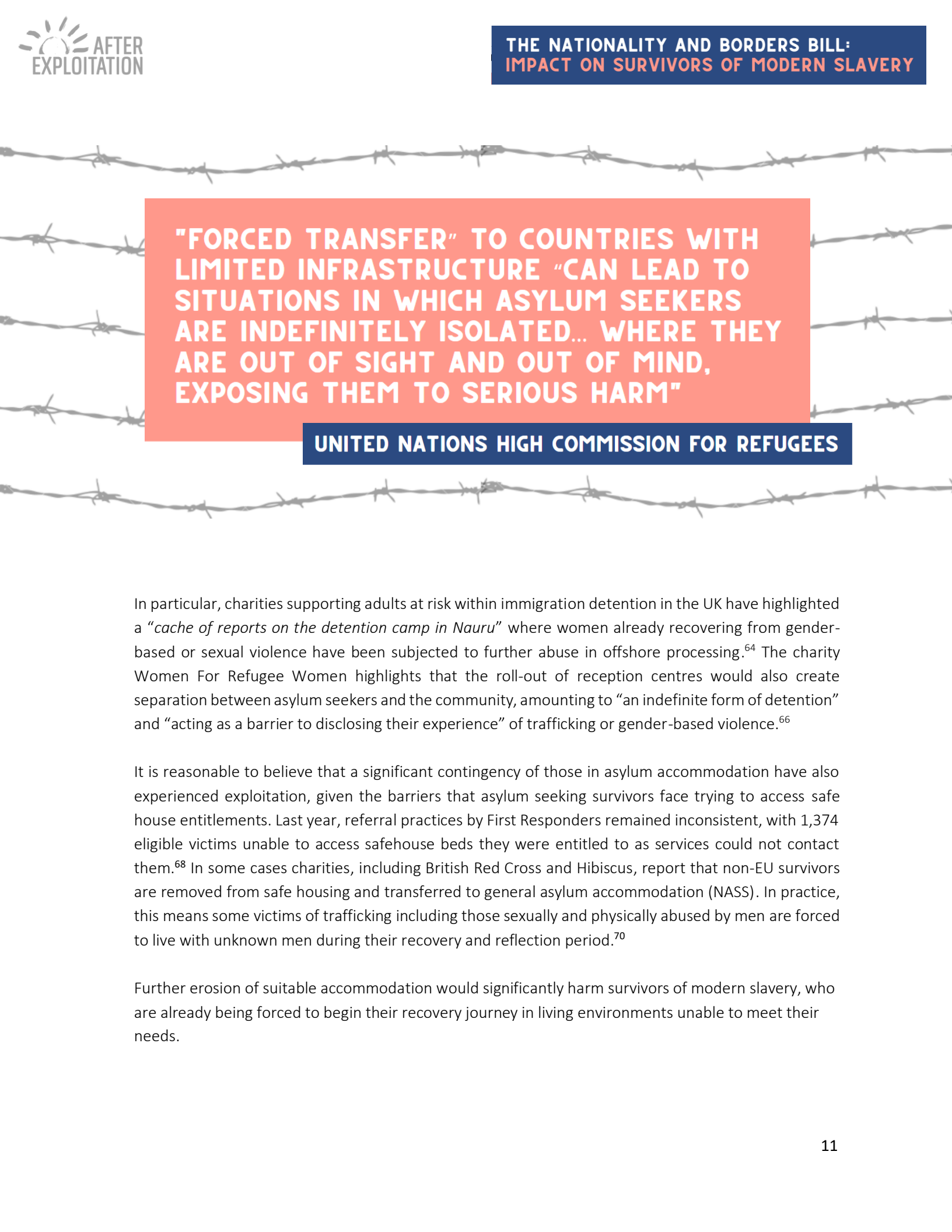
Changes to the asylum system more broadly would also make life harder for survivors of modern slavery. As part of a move away from a ‘merit-based’ asylum system, the ‘New Plan’ would penalise claimants for late-stage asylum applications and the method of entering the UK. In cases of trafficking to the UK victims would be penalized for travel which they had no control over and possibly little or no knowledge of. In practice, as well as facing the threat of support withdrawal through penalties on ‘late’ trafficking evidence, asylum seeking survivors would experience the ‘dual punishment’ of penalties associated with ‘late’ evidence relevant to their asylum claim. For survivors particularly at risk of deportation or detention, this change would exacerbate vulnerability even further.

## Alienating vulnerable people: Offshore processing and ‘out of town’ reception centres

In both the ‘New Plan for Immigration’ policy paper<sup>55</sup> and media briefings<sup>56</sup> the Government has committed to facilitate out-of-town process centres and Australia-style offshore processing of asylum claims. Where this system is already operational on Australia’s neighbouring Manus Islands and Papa New Guinea, relatively few asylum seekers are ever homed in the community and instead “*languish in detention on these islands indefinitely*”.<sup>58</sup>

These measures would create tangible distance between asylum claimants and the wider community, making it much harder for survivors of modern slavery to access the advocacy and support structures needed to understand the relevance of their exploitation and to feel confident enough sharing this, or to have access to a designated First Responder who is able to make an NRM referral. Disclosure of trafficking is already incredibly difficult to secure, even between survivors and front-line staff with specialism in this field.<sup>59,60,61</sup> A number of charities and international agencies have warned against offshore processing<sup>62</sup>:





**"FORCED TRANSFER" TO COUNTRIES WITH LIMITED INFRASTRUCTURE "CAN LEAD TO SITUATIONS IN WHICH ASYLUM SEEKERS ARE INDEFINITELY ISOLATED... WHERE THEY ARE OUT OF SIGHT AND OUT OF MIND, EXPOSING THEM TO SERIOUS HARM"**

**UNITED NATIONS HIGH COMMISSION FOR REFUGEES**

In particular, charities supporting adults at risk within immigration detention in the UK have highlighted a “*cache of reports on the detention camp in Nauru*” where women already recovering from gender-based or sexual violence have been subjected to further abuse in offshore processing.<sup>64</sup> The charity Women For Refugee Women highlights that the roll-out of reception centres would also create separation between asylum seekers and the community, amounting to “an indefinite form of detention” and “acting as a barrier to disclosing their experience” of trafficking or gender-based violence.<sup>66</sup>

It is reasonable to believe that a significant contingency of those in asylum accommodation have also experienced exploitation, given the barriers that asylum seeking survivors face trying to access safe house entitlements. Last year, referral practices by First Responders remained inconsistent, with 1,374 eligible victims unable to access safehouse beds they were entitled to as services could not contact them.<sup>68</sup> In some cases charities, including British Red Cross and Hibiscus, report that non-EU survivors are removed from safe housing and transferred to general asylum accommodation (NASS). In practice, this means some victims of trafficking including those sexually and physically abused by men are forced to live with unknown men during their recovery and reflection period.<sup>70</sup>

Further erosion of suitable accommodation would significantly harm survivors of modern slavery, who are already being forced to begin their recovery journey in living environments unable to meet their needs.



# #SCRAPTHEPLAN

ALL OF US, FROM BUSINESS OWNERS TO MEMBERS OF THE PUBLIC, MUST ASK MPS ACROSS THE POLITICAL SPECTRUM TO #SCRAPTHEPLAN FOR VULNERABLE MIGRANTS INCLUDING SURVIVORS OF TRAFFICKING.

Going forward, Government must:

- **Scrap the Nationality and Borders Bill**, in recognition of the impact this would have on survivors of modern slavery. The Bill is in breach of international law and humanitarian commitments, creating vulnerabilities amongst victims of crime. The inclusion of restrictions on slavery support undermines the Modern Slavery Act 2015.
- **Halt plans to allow support to be denied to survivors** before referral to dedicated decision makers, a damaging practice if brought in via law or guidance
- **Commit to merit-based trafficking and asylum decision-making**, with the former function removed from the Home Office's jurisdiction, in order to guard against perverse incentive to deport or detain victims
- **Stop enacting policies with the intent of punishing asylum seekers**, all of which would negatively impact non-UK survivors' ability to disclose experiences of trafficking. This includes halting plans for Australia-style offshore processing of asylum claims, and expanded use of barracks and detention for those awaiting a claim, which would all see vulnerable people separated from communities and advocates.



# YOUR THOUGHTS

To discuss the Nationality and Borders Bill, 'New Plan for Immigration', or any other policy areas mentioned in this briefing, please contact Maya Esslemont via email ([info@afterexploitation.org](mailto:info@afterexploitation.org))

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