

# Written evidence submitted by CARE (Christian Action Research and Education) (NBB46)

## Submission to the Public Bill Committee on the Impact of the Nationality and Borders Bill on Victims of Modern Slavery: Clauses 49, 52 and 53

**By email to [scrutiny@parliament.uk](mailto:scrutiny@parliament.uk)**

- CARE is very concerned that matters related to modern slavery are being placed in a Bill dealing with immigration. A person's immigration status should be considered separately from the decision as to whether they are a victim of modern slavery. Individuals who may be potential victims should be assessed through the National Referral Mechanism regardless of how they have arrived in the UK.
- CARE is extremely disappointed that the clauses on victim support and immigration leave (clauses 52 and 53) do not provide the comprehensive reform proposed under Lord McColl/ Iain Duncan Smith's Modern Slavery (Victim Support) Bill;<sup>1</sup> and could make matters worse for victims than the status quo.
- CARE supports amendments 1-7 to clauses 49, 52 and 53,<sup>2</sup> which are in line with the Modern Slavery (Victim Support) Bill.

### Introduction to CARE

1. CARE (Christian Action Research and Education) is a well-established mainstream Christian charity providing resources and helping to bring Christian insight and experience to matters of public policy and practical caring initiatives. CARE has been working on human trafficking policy since 2006.

### Summary

2. CARE is concerned that modern slavery matters are being reformed within immigration legislation. We are also concerned that no impact assessment has accompanied this Bill so there is no indication of the Government's assessment on how the measures proposed will impact the number of modern slavery victims. The focus of our submission is on support for victims and their ability to have leave to remain once confirmed a victim of modern slavery
3. We welcome the Government making some of the Bill's reforms on support for modern slavery, but recommend:
  - 3.1. The recovery period when a person can receive support and not be deported should be for 45 days in line with the current statutory guidance in England and Wales and legislative conditions in Scotland and Northern Ireland (amendment 1).
  - 3.2. The removal of the narrowing of support in England and Wales only being necessary for the purpose of assisting in recovery of harm caused directly by trafficking (amendment 2).
  - 3.3. The removal of the restrictive criteria to grant leave to remain only when considered necessary to assist in the recovery of any harm arising from a victim's exploitation, and replacing this with what is necessary to assist the person in their personal situation (amendment 5).
  - 3.4. The removal of the criteria of not granting leave to remain if assistance can be provided in another country or compensation sought in another country (amendment 6)

<sup>1</sup> A new Bill is in the Private Members Bill queue for First Reading. This submission refers to the [published Bill HL 21](#) in the 2019-21 session.

<sup>2</sup> [Public Bill Committee Amendments as at 26 October 2021](#)

- 3.5. Clear details of what assistance should be provided to victims and under what circumstances (amendment 4).
- 3.6. Putting on statutory footing, the provision of support for confirmed victims in England and Wales with a positive conclusive grounds decision for a period of 12 months following the NRM (amendment 3). We believe this should be the case for victims across the UK but support is devolved in Scotland and Northern Ireland so cannot be the subject of this Bill.
- 3.7. Granting 12 months leave to remain for all confirmed UK victims with a positive conclusive grounds decision in order for these victims to receive 12 months post-NRM support (amendment 7).

## Overview of Modern Slavery in the UK

4. The determination of who is a victim of trafficking is carried out under a UK wide process by the Home Office known as the National Referral Mechanism (NRM). The Home Office also determines the immigration status of victims who are not UK citizens. The care for victims and the offences related to modern slavery are devolved matters that are dealt with differently across the three UK jurisdictions under their different pieces of primary legislation passed in 2015.<sup>3</sup> The Home Office issues guidance on the identification and support of victims under section 49 of the Modern Slavery Act 2015 which is statutory for England and Wales and non-statutory for Scotland and Northern Ireland.<sup>4</sup> The Home Office also issues guidance on discretionary leave to remain for modern slavery victims.<sup>5</sup>
5. The number of people in modern slavery in the UK is currently estimated to be in excess of 100,000, although given that it is a crime which goes largely unseen and undetected, this number is likely to be even greater.<sup>6</sup> There was a 52% increase in NRM referrals from 2018 to 2019, which may be the result of improved awareness and therefore increased identification of victims, but these figures also work to highlight the prevalence of modern slavery in the UK.

	<b>2018</b>	<b>2019</b>	<b>2020</b>
<u>Adults</u>	3,856	5,852	5,087
<u>Children</u>	3,137	4,547	4,946
<b>Total</b>	<b>6,993</b>	<b>10, 616</b>	<b>10,613</b>
<u>Adults identified but who did not consent to enter the NRM (England and Wales)</u>	<b>1,688</b>	<b>2,164</b>	<b>2,178</b>

### **Number of Adults and Children who entered the NRM between 2018-2020.<sup>7</sup>**

6. In 2020 alone, there were 10,613 potential victims of modern slavery in the UK who were referred into the National Referral Mechanism (NRM); this does not include any of the potential victims who refused to enter the NRM (see above table), 74% of those referred reported their exploitation took place in the UK in full or in part.<sup>8</sup>
7. In 2020, labour exploitation accounted for 21% (2,241) of all referrals and was the most commonly reported type for adult potential victims (32%; 1,622); most of those (90%; 1,464) were male. For both

<sup>3</sup> [Modern Slavery Act 2015, Human Trafficking and Exploitation \(Criminal Justice and Victim Support\) Act \(Northern Ireland\) 2015](#) and [Human Trafficking and Exploitation \(Scotland\) Act 2015](#)

<sup>4</sup> <https://www.legislation.gov.uk/ukpga/2015/30/section/49>

<sup>5</sup> [Discretionary leave for victims of modern slavery casework guidance \(publishing.service.gov.uk\)](#)

<sup>6</sup> Centre for Social Justice, "It still happens here: Fighting UK Slavery in the 2020s," July 2020, page 20

<sup>7</sup> [National Referral Mechanism Statistics - End of Year Summary 2018 \(nationalcrimeagency.gov.uk\)](#), Data provided by Office for National Statistics (Table 24) **Error! Hyperlink reference not valid.**

<sup>8</sup> *Ibid*

adult and child potential victims, most referrals for sexual exploitation (90% and 85% respectively) were for female potential victims.<sup>9</sup>

### **CARE's Concern about Dealing with Modern Slavery in this Bill**

8. From a point of principle, a **person's immigration status should be considered separately from the initial decision as to whether or not they are a victim of modern slavery**. In 2017 the Work and Pensions Committee reported on modern slavery and said, "*The Home Office said that consideration of a person's status as a victim of modern slavery is 'entirely separate from any decision on whether someone is entitled to stay in the UK'*".<sup>10</sup> It appears that the Government's position has changed since 2017 as the proposals in the Immigration Plan and this Bill suggest that the two systems could be intertwined at points of early decision making which would be contrary to the above principle.
9. There are big questions about how the Single Competent Authority would interact with immigration decision making, especially as "*this new process...will mean that the credibility of the individual and the weight of their evidence will be considered in light of their previous opportunities to present that evidence.*"<sup>11</sup> We question how the role of the SCA to determine whether a person is a victim or not will play into this process and whether the "one-stop process" will have the expertise to make determinations about modern slavery, if that is indeed the intent. Furthermore, it is not clear how these reforms propose to treat UK nationals who are referred to the NRM.
10. In 2017, the National Audit Office said, "*The Home Office does not know how much is spent on tackling modern slavery across government or how effective that expenditure is.*"<sup>12</sup> Since there is no impact assessment, there is no clarity on how these proposals are intended to impact the number of victims being assessed, nor whether it will have a disproportionate effect on certain nationalities, nor whether the Bill improves the value for money being spent on modern slavery.

### **Potential Impact of Asylum Changes for Victims of Modern Slavery across the UK**

11. In 2017, the UK Government issued figures on the grants of leave to confirmed modern slavery victims. 21% of confirmed victims who are neither UK nor EU nationals were granted asylum in 2015.<sup>13</sup> Suggestions that a person must have arrived legally to claim asylum is likely to impact victims who have been brought to the UK either without their consent/or full understanding and would not have been able to apply for asylum in another country. They may also be supplied with false papers. GRETA in the Evaluation Report for the UK published in October 2021 have also expressed concern that, "*the planned legislative and policy measures risk increasing the vulnerability of victims of trafficking who are undocumented migrants, as they may be reluctant to approach the authorities for fear of being prosecuted for immigration-related offences, resulting in failure to identify them as victims, provide them with the necessary assistance, and investigate human trafficking offences.*"<sup>14</sup>
12. The Independent Anti-Slavery Commissioner (IASC) in her letter to the Home Secretary on the Nationality and Borders Bill pointed out, "*The devastating situation in Afghanistan is a stark reminder of the vital importance of safe routes for refugees and asylum seekers...however, what is clear from the consultation and particularly responses from those with lived experience, is that such routes are often inaccessible.*"<sup>15</sup> Individuals in desperate situations are particularly vulnerable to exploitation by traffickers who will offer false promises and the hope of a better life and job overseas. These individuals may therefore find themselves illegally in the country because of being deceived by

<sup>9</sup> *Ibid*

<sup>10</sup> House of Commons Work and Pensions Committee, Victims of Modern Slavery, HC 803, 30 April 2017, para 23, <https://www.publications.parliament.uk/pa/cm201617/cmselect/cmworpen/803/803.pdf>

<sup>11</sup> [New Plan for Immigration, Policy Statement](#), March 2021

<sup>12</sup> National Audit Office [Reducing Modern Slavery HC 630](#) Session 2017–2019, December 2017 para 10, page 9

<sup>13</sup> [Letter to Frank Field from Sarah Newton MP](#), Home Office Minister, 17 Feb 2017

<sup>14</sup> [Council of Europe GRETA Evaluation Report United Kingdom](#), 20 October 2021, para 48, page 20

<sup>15</sup> Letter to Home Secretary from Dame Sara Thornton (IASC), 7 Sept 2021 [iasc-letter-to-the-rt-hon-priti-patel-mp-home-secretary-march-2021.pdf \(antislaverycommissioner.co.uk\)](#)

traffickers.<sup>16</sup> The IASC points out that whilst there is an importance on disrupting criminal networks, *'measures taken should not increase the vulnerability of those already in precarious situations...those entering this country irregularly may become exploited at any point, particularly if they have debt incurred for their journey.'* The Explanatory Report on the European Convention Against Trafficking (ECAT) states, *"Many victims ...are illegally present in the country where they are being exploited"*.<sup>17</sup> Victims of modern slavery are often forcibly brought to the UK, so this Bill contravenes everything we know about modern slavery and the way in which human trafficking works. **These are individuals who may have been able to apply for asylum in the current context but might not be able to do so under the proposals in Part 2 of the Bill.**

13. **CARE believes that individuals who may be potential victims of trafficking should be assessed through the National Referral Mechanism (NRM) regardless of how they have arrived in the UK.** The Government must ensure that their immigration proposals do not lead to more coercion for victims from traffickers as there is the potential for traffickers to tell victims they will be deported from the UK regardless of their exploitation. This has the potential to feed into the fear which traffickers try to instil in their victims of both immigration officials and the police.

### **Changes to Determining who is a Victim of Modern Slavery across the UK**

14. Clauses 46-48 bring in UK-wide changes that would allow the Home Secretary to define who is a victim and to require specific information to determine whether a person is a victim of modern slavery.<sup>18</sup> The Bill's Human Rights Memorandum states that the measures in Part 4, *"seek to ensure that victims are identified as quickly as possible, while enabling decision makers to distinguish more effectively between genuine and non-genuine accounts of modern slavery"*.<sup>19</sup> The Government have described the measures as a tightening up of the process on the basis of *"objective factors"*.<sup>20</sup> The Delegated Powers Memorandum describes the change as *"relatively minor"*,<sup>21</sup> but the Bill does not define a new threshold for a reasonable grounds decision.
15. There is nothing in the Bill to explain what these objective factors might be. Indeed, the narrative around the reforms assumes that identifying a person at the start of the immigration process or for referral into the NRM will rely on identifying these objective factors easily. For instance, suggestions that if a person does not disclose all their abuse at the start of the 'one stop shop' proposal it will negatively affect their 'credibility'<sup>22</sup> will penalise victims, since it would not be unexpected if they were not able to disclose all or any exploitation until they felt safe to do so.<sup>23</sup> Indeed, the Independent Anti-Slavery Commissioner's *'central concerns'* around the New Plan for Immigration is the *"failure to take account of the trauma experienced by modern slavery victims"* and what the evidence tells us about disclosure of trafficking.<sup>24</sup> Narratives are *"likely to emerge piecemeal, becoming more coherent as trusting relationships are established and victims feel able to speak about their experiences more openly."*<sup>25</sup> The IASC is therefore *'concerned'* that these changes *'would make the identification of victims of modern slavery harder.'*<sup>26</sup>

<sup>16</sup> New Plan for Immigration Overarching [Equality Impact Assessment](#) of policies being delivered through the Nationality and Borders Bill, p9

<sup>17</sup> [Explanatory Report](#) on the European Convention on Trafficking, para 131

<sup>18</sup> Although some of these requirements will not apply to the 34% of potential victims in 2020 who were UK nationals. See 2020 NRM Statistics, [End of Year Summary](#), page 6

<sup>19</sup> [Nationality and Borders Bill Human Rights Memorandum page 3](#)

<sup>20</sup> [New Plan for Immigration, Policy Statement](#), March 2021, page 31

<sup>21</sup> [Delegated Powers Memorandum](#), page 15

<sup>22</sup> [Explanatory Notes](#), para 29, page 7; clauses 17, 20 and 47

<sup>23</sup> The Human Trafficking Foundation et al, [Supporting Adult Survivors](#) of Slavery to Facilitate Recovery and Reintegration and Prevent Re-Exploitation, March 2017, page 7

<sup>24</sup> [Letter to Home Secretary from Dame Sara Thornton](#) (IASC), 7 Sept 2021

<sup>25</sup> Oram, S. & Domoney, J. (2018). 'Responding to the mental health needs of trafficked women'.

<sup>26</sup> [Letter to Home Secretary from Dame Sara Thornton](#) (IASC), 7 Sept 2021

16. **Any reform of the system for identifying victims must take into account trauma, memory loss and inconsistencies in recalling experiences.**<sup>27</sup> This is reflected within the Modern Slavery Statutory Guidance, which notes that victims' early accounts may be affected by the impact of trauma.<sup>28</sup> In their response to the New Plan for Immigration, the Salvation Army also highlighted how within both NRM interviews and during the reflection and recovery period, many victims initially recall their experiences with contradictions or inconsistencies.<sup>29</sup>
17. While we support the Government in removing abuse of the trafficking system,<sup>30</sup> CARE is very concerned that some individuals will be unable to provide the required evidence in what is considered a timely manner under the proposals, even when they are genuine victims, and they will therefore be excluded from the NRM and the associated support. In 2020, 2,178 of adults identified by First Responders as suspected victims of modern slavery within the UK did not agree to entering the NRM, which would have entitled them to support.<sup>31</sup> This means that people who may have needed support got none. If entering the NRM is going to be closely tied to immigration status (for non-British nationals) and to victims being able to prove their abuse, the number of victims not entering the NRM is likely to increase, potentially leading to more vulnerability and exploitation for individuals who are desperately in need of support.
18. **CARE recommends** that the Bill is trauma-informed and amended to ensure that victims are able to disclose their abuse over time and not be penalised for doing so.

### **Changes on the Recovery Period for Victims across the UK (Clause 49)**

19. Under Article 13 of the ECAT, victims must receive a recovery period for a minimum of 30 days. Article 13 states, '*such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities.*'<sup>32</sup> Additionally, '*during this period it shall not be possible to enforce any expulsion order against him or her.*'<sup>33</sup> The UK Government has interpreted the recovery period as the time while a person is in the NRM being confirmed (or not) as a victim – that is after a reasonable grounds decision but before a conclusive grounds decision. **The UK has historically made the recovery period longer than required under ECAT.** The recovery period in England and Wales (E&W) and Northern Ireland is 45 days. In E&W, the 45 days minimum is set out in the current Statutory Guidance.<sup>34</sup> In Northern Ireland a victim can receive statutory support for at least 45 days even if a positive CGD is made before then.<sup>35</sup> Scotland offers up to 90 days support or until a CGD is made.<sup>36</sup>
20. The Independent Anti-Slavery Commissioner described this period for potential victims as "*an agonising wait about their future*", pointing out that the system currently "*is not doing enough to equip them [victims] to become survivors and to live a life of sustainable independence.*"<sup>37</sup> The IASC goes so far as to say she has "*become gravely concerned about the length of time they are waiting for decisions from the Home Office about their future.. Many victims are facing unacceptably long delays for a bureaucratic system to assess whether they are victims of slavery*"<sup>38</sup> Her recommendations in the short term were for the Home Office to reduce the delays in the system, but the IASC also called for 'a

<sup>27</sup> [Letter to Home Secretary from Dame Sara Thornton](#) (IASC), 7 Sept 2021

<sup>28</sup> [Modern Slavery Act 2015 – Statutory Guidance for England and Wales](#), page 86

<sup>29</sup> [Letter to Home Secretary from Dame Sara Thornton](#) (IASC), 7 Sept 2021

<sup>30</sup> [New Plan for Immigration, Policy Statement](#), March 2021

<sup>31</sup> 2020 NRM Statistics, [End of Year Summary](#), page 11

<sup>32</sup> [Council of Europe Convention on Action against Trafficking in Human Beings CM 7465 \(publishing.service.gov.uk\)](#)

<sup>33</sup> *Ibid*

<sup>34</sup> Modern Slavery: Statutory Guidance, [Version 2.3](#), June 2021, para 8.20, page 64

<sup>35</sup> [Section 18](#), Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015

<sup>36</sup> [Regulation 2](#), The Human Trafficking and Exploitation (Scotland) Act 2015 (Support for Victims) Regulations 2018; [Section 9](#), Human Trafficking and Exploitation (Scotland) Act 2015

<sup>37</sup> [Victims are waiting for too long for the decisions – The time has come for a radical reform](#), Independent Anti-Slavery Commissioner, February 2020

<sup>38</sup> *Ibid*

*more radical reform' of the support system pointing out 'often cases are complex and vulnerable victims may have many needs which are probably best met through a more local approach. The time is right to work together to develop new ways to support the most vulnerable victims and improve their longer term outcomes.'*<sup>39</sup>

21. Clause 49(2) defines the Recovery Period for all victims as 30 days, so this is a shorter recovery period than currently available. **Since a victim cannot be removed from the UK during the Recovery Period,**<sup>40</sup> there is a potential for **a significant impact on victims across the UK** who are currently receiving support services for longer than 30 days. It is not clear if they will be able to continue to receive this support and/or whether they might be subject to removal while receiving that support.
22. In her letter to the Home Secretary, the Independent Anti-Slavery Commissioner noted that *'in reality, the system is so slow that the average length of time for a conclusive grounds decision in 2020 was 465 days.'*<sup>41</sup> When asked during Oral Evidence to the Committee, if *'there was not a 400-odd day wait and...these decisions were made timeously, would [she] have concerns if the recovery period had been reduced from 45 days to 30 days'*, the IASC responded that, *'it would have a negative impact...if you think about providing people with counselling and helping with their medical support and legal advice...30 days is not very long.'*<sup>42</sup>
23. Whilst more timely decisions would be welcome to provide stability for victims, **if the time period for decision making is reduced and the recovery period has also been reduced to 30 days, this will have a significant impact on victims of modern slavery across the UK who are currently entitled to longer periods of support than 30 days.** Reducing the recovery period could also further disincentivise victims from entering the NRM, meaning that they will lose out on critical support. Victims are already often reluctant to engage with authorities and choose not to enter the system out of fear instilled in them by their traffickers that they will be deported. They will be even less incentivised to take the 'risk' as they may see it, of engaging with officials if the period of support is further reduced. As mentioned above, the number of potential victims who do not enter the NRM has already increased over the last 3 years; reducing the guaranteed timeframe of support for the recovery period could work to further increase this number.
24. **CARE supports amendment 1 to the Bill to clause 49(2) and recommends increasing the recovery period from 30 days to 45 days in line with current statutory guidance/legislation, depending upon the jurisdiction.**

### **Changes on Statutory Support for Victims in England and Wales**

25. Clause 52 will put support for victims in England and Wales on a statutory basis during the 30 day recovery period. While CARE welcomes the fact that the Government is proposing placing support on a statutory basis which would bring it into line with Scotland and Northern Ireland, any benefit is cancelled out by the fact that the support will be reduced from 45 days to 30 days. Victims in England and Wales will receive 2 weeks less support than is currently stipulated in the Statutory Guidance.<sup>43</sup> CARE is **concerned about two limitations** of clause 52;
26. Firstly, it offers neither as comprehensive support during the recovery period as in Scotland and Northern Ireland,<sup>44</sup> nor that proposed in the McColl/Duncan Smith Bill, both of which are based on

<sup>39</sup> *Ibid*

<sup>40</sup> [Explanatory Notes](#), para 542, page 62

<sup>41</sup> Independent Anti-Slavery Commissioner (2021), '[Independent Anti-Slavery Commissioner Annual Report](#)'.

<sup>42</sup> Nationality and Borders Bill (Fourth sitting) - [Thursday 23 September 2021 - Hansard - UK Parliament](#)

<sup>43</sup> [Modern Slavery: Statutory Guidance for England and Wales \(publishing.service.gov.uk\)](#)

<sup>44</sup> [Section 18](#), Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015; [Section 9](#), Human Trafficking and Exploitation (Scotland) Act 2015

ECAT requirements. The support in clause 52 would be restricted only to that "necessary" to assist with recovery from *"the conduct which resulted in the positive reasonable grounds decision in question"*, nor does it specify exactly what it must cover nor the manner of its provision.

- 26.1. Article 12 of ECAT requires states to provide various forms of support to *"assist victims in their physical, psychological and social recovery"*,<sup>45</sup> because at the Explanatory Report to ECAT makes clear, *"Victims who break free of their traffickers' control generally find themselves in a position of great insecurity and vulnerability,"* and so Article 12, *"sets out the assistance measures which Parties must provide for trafficking victims."*<sup>46</sup>
- 26.2. Article 12(1) of ECAT states, *"such assistance shall include at least: (a) standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance; (b) access to emergency medical treatment; (c) translation and interpretation services, when appropriate; (d) counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand; (e) assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders and (f) access to education for children."* Services must be provided regardless of whether the victim is willing to act as a witness (12(6)) and with the consent of the victims (12(7)).<sup>47</sup>
- 26.3. The Explanatory Report makes clear however, that, *"it is always open to Parties to adopt measures more favorable...the assistance measures referred to are minimum ones. Parties are thus free to grant additional assistance measures."*<sup>48</sup>
27. In GRETA's 2021 report the Committee said, *"While welcoming the measures taken for improve victim assistance, GRETA considers that the UK authorities should take **additional steps** to ensure that all **assistance measures provided for in the Convention are guaranteed in practice, in particular by: ensuring that victims of trafficking are provided with adequate support and assistance, according to their individual needs, for as long as required, with a view to facilitating their reintegration and recovery, guaranteeing their protection.**"*<sup>49</sup> (bold added)
28. **CARE supports amendment 2 to clause 52(2) which would make the objective of assistance and support as that necessary for a victim's physical, psychological and social recovery.**
29. **CARE supports amendment 4 which would define the types of assistance and support that must be provided to a victim of modern slavery in England and Wales under clause 52. This would be in line with Article 12 of ECAT, and the conditions associated with its provision.**
30. Amendment 4 would introduce a new clause to the Modern Slavery Act 2015 (MSA) to define the types of assistance and support that would be given to victims of modern slavery in England and Wales under clause 52 (which introduces new section 50A of the MSA<sup>50</sup>). Notably, it includes the provision of a support worker, as recommended by victim care providers and other reports.<sup>51</sup> It includes the provision of assistance to obtain legal advice and representation, which responds to concerns raised that victims currently face challenges in accessing lawyers.<sup>52</sup> It also stipulates the conditions, in accordance with the obligations of the Council of Europe under which support must be provided. It includes the requirement that support must be provided in accordance with an assistance and support plan which specifies that person's needs for support and how those needs

<sup>45</sup> [Council of Europe Convention on Action against Trafficking in Human Beings CM 7465 \(publishing.service.gov.uk\)](#)

<sup>46</sup> [Explanatory Report to ECAT \(2005\)](#) at [146] page 24

<sup>47</sup> [Council of Europe Convention on Action against Trafficking in Human Beings CM 7465 \(publishing.service.gov.uk\)](#)

<sup>48</sup> [Explanatory Report to ECAT \(2005\)](#) at [146] page 24

<sup>49</sup> [Council of Europe GRETA Evaluation Report United Kingdom](#), 20 October 2021, paragraph 282, page 71

<sup>50</sup> New section 50A refers to guidance under section 49 of the MSA and to regulations under section 50 on identifying and supporting victims (regulations which have not yet been made)

<sup>51</sup> Human Trafficking Foundation et al. ['Supporting survivors of slavery to facilitate recovery and reintegration and prevent Re-exploitation' \(squarespace.com\)](#), pg 19-21

<sup>52</sup> *Ibid*

will be met for the full duration of the period to which that person is entitled to support under this Act. This responds to the recommendation of the Work and Pensions Select Committee that victims should receive a personal plan detailing their road to recovery.<sup>53</sup>

31. Secondly, there are **no proposals for statutory support after a conclusive grounds decision**, as in the McColl/Duncan Smith Bill. CARE believes that confirmed victims need longer-term support to complete their recovery and ensure they are not re-trafficked, as well as providing stability from which to engage with the criminal justice system to bring their perpetrators to justice. In 2020, the Centre for Social Justice said, "*Long-term support is a further significant gap in the support system. In recent years a number of reports have concluded that lack of long-term support puts victims of modern slavery at risk of homelessness, destitution and even re-trafficking after they exit the NRM support provision. It also has a significant negative impact on their engagement with the criminal justice system.*"<sup>54</sup>
32. **CARE supports amendment 3, adding a new subsection (6A) to Clause 52, to give modern slavery victims in England and Wales with a positive conclusive grounds decision the right to receive support and assistance for at least 12 months.**

### ***The arguments for providing longer-term support***

33. This is in line with the 2016 GRETA Report on the implementation of the European Convention against Human Trafficking urged "*the UK authorities and devolved administrations to make further efforts to ensure that all victims of trafficking are provided with adequate support and assistance, according to their individual needs, beyond the 45-day period covered by the NRM, with a view to facilitating their reintegration and recovery as well as guaranteeing their protection.*"<sup>55</sup>
34. **The failure to make provision for long term recovery after the NRM is a major problem for two reasons:**
  - 34.1. Charities working with victims say **12 months is the minimum necessary time** to help someone who has been traumatised to begin to rebuild their life and prevent them from being re-trafficked. A group of more than 13 frontline charities that are expert practitioners in providing support to victims of slavery highlighted the problem, stating "*the support currently provided to survivors of human trafficking and modern slavery is not meeting recovery needs. Government funded support ends abruptly and too early and there is little information or data as to what happens to survivors in the longer term. The current situation leaves survivors with little realistic opportunity to rebuild their lives, with some ending up destitute, vulnerable to further harm or even being re- exploited.*"<sup>56</sup> The Work and Pensions Committee's (WPC) 2017 report concluded that the Modern Slavery Act (MSA) did not establish a pathway for victims' recovery and compared the position of modern slavery victims with that of refugees, who are able to remain in the UK for at least five years, while recognition as a victim of slavery through the NRM confers no equivalent right to remain, for any period. The WPC recommended that "*all confirmed victims of modern slavery be given at least one year's leave to remain with recourse to benefits and services...this would allow time for victims to receive advice and support, and give them time to plan their next steps.*"<sup>57</sup> The WPC rejected as unfounded the argument that to do so would create a pull factor to the UK, for slave masters or victims. A 2019 report by the British Red

<sup>53</sup> House of Commons Work and Pensions Committee, *Op Cit.* para 79

<sup>54</sup> Centre for Social Justice, "[It still happens here: Fighting UK Slavery in the 2020s.](#)" July 2020, page 44

<sup>55</sup> [2016 GRETA Report on the implementation of the European Convention against Human Trafficking](#)

<sup>56</sup> Human Trafficking Foundation et al Supporting Adult Survivors Of Slavery To Facilitate Recovery And Reintegration And Prevent Re-Exploitation March 2017 p.1

<sup>57</sup> House of Commons Work and Pensions Committee, [Victims of Modern Slavery](#), HC 803, 30 April 2017, page 3 Chapter 2 of the report contains further information on the status of recognized victims. See pages 7-19 and paragraph 80

Cross recommends that victims of trafficking should be granted immigration status of at least 30 months to help victims recover and rebuild their lives.<sup>58</sup>

34.2. **Victims need longer-term support to enable police investigations.** An expert from the Snowdrop Project, a charity which provides ongoing support to victims of modern slavery after they have left the NRM, told the Home Affairs Committee the experience of one of their clients: *"A gentleman went on the stand against his traffickers. It took two and a half years to get to the point where he could take the stand against his traffickers following a conclusive grounds decision. During that period of time, he said to us, 'If I wasn't being supported right now, I wouldn't think about going and giving evidence against my traffickers.' As a result of that, the traffickers got 43 years in total. His evidence was key to getting those convictions. If he had just been given discretionary leave and not support, that evidence would not have been given."*<sup>59</sup>

35. The Government will argue that they are already providing support for confirmed victims in E&W through the Recovery Needs Assessment (RNA).<sup>60</sup> However, **CARE believes this support is insufficient and ineffective** as the objective is to provide "intensive short-term support" as a bridge to transition victims into other services,<sup>61</sup> but it is neither statutory nor provides any immigration certainty. The Government argues that *"all victims are individuals with their own personal recovery needs arising from their modern slavery experiences. The new needs-based assessment system has been developed to ensure that individual needs are considered and supported with a tailored move-on plan, rather than a blanket approach to victim support"*.<sup>62</sup> Lord McColl's Bill also requires support be provided under an assistance and support plan according to the individual's needs, but crucially takes a longer term approach. Under the RNA:

35.1. **Victims are not guaranteed long-term support.** Victims will receive a minimum of 45 days "move-on" support and the RNA assessment will determine how much, if any, extra support is required under the Modern Slavery Victim Care Contract (MSVCC), beyond that with a maximum of 6 months at time,<sup>63</sup> but potentially only a few days or weeks.

35.2. **The needs of victims are not fully addressed.** In the 2020 Annual Report on Modern Slavery the support recommended by the victim's support worker was only agreed to in full by the Home Office in 53% of cases, which raises questions about whether the process genuinely responds to victims' needs or rather is focussed on moving victims out of the service. Furthermore, a need is considered met if the person is on a waiting list for treatment/counselling or sign posted to a service, not that the person has received the support or service. The RNA repeatedly mentions that support will only be offered to confirmed victims for needs arising from their 'modern slavery experiences'. This implies that the RNA will try to distinguish between needs arising from before and after the victim's modern slavery abuse. This is problematic because victims of trafficking often have pre-existing needs which made them vulnerable to exploitation initially. The narrow focus of support increases the risk that highly vulnerable people with ongoing complex needs will be exited from support into destitution or re-trafficking.

35.3. **There is no change in immigration status,** which means a victim may not have the immigration status required to be able to receive mainstream services. The Guidance recognizes that the ability to receive services outside the MSVCC maybe contingent on immigration decisions, so victims may need to remain in the MSVCC rather than move onto more suitable services that could meet their recovery needs.<sup>64</sup> Since 1 January 2021 this also

<sup>58</sup> British Red Cross, [Hope for the future: Support for survivors of trafficking after the National Referral Mechanism](#). July 2019

<sup>59</sup> 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

<sup>60</sup> [Home Office, Recovery Needs Assessment \(RNA\)](#), Version 3, January 2021

<sup>61</sup> *Ibid*

<sup>62</sup> [Parliamentary Question HL9004, answered 26 October 2020](#)

<sup>63</sup> Recovery Needs Assessment (RNA), Version 3, *Op Cit*, page 17

<sup>64</sup> Recovery Needs Assessment (RNA), Version 3, *Op Cit*, page 16

applies to all EEA national victims (unless they qualify and apply for the EU settlement scheme before the end of June 2021).

- 35.4. **Victims are not guaranteed a support worker** beyond the time the person is receiving services in the VCC. The support worker does not continue to work with the victims when they receive services in the community. The McColl/Duncan Smith Bill provides a support worker for the time the person is receiving support under the Bill (ie at least 12 months) to assist a person in navigating the systems victims need to access.
36. The issues raised above highlight that the RNA does not address the fundamental challenge facing victims: the need for stability, certainty over their circumstances (including their immigration status) and long-term support. This failure mitigates against the provision of the security that victims need to recover and have sufficient confidence to give evidence in court against their traffickers. **CARE recommends providing modern slavery victims in England and Wales with a positive conclusive grounds decision the right to receive support and assistance for at least 12 months.**

### **Changes on Leave to Remain for Victims across the UK (Clause 53)**

37. **The proposals in clause 53 will place the current discretionary leave to remain (DLR) measures for confirmed victims of modern slavery on a statutory basis, which in itself is welcome, but makes the situation worse (and narrower) than the current status quo:** DLR will be restricted to what is considered necessary to assist in recovery of harm caused directly by trafficking and leave will not be granted if a victim can receive support in their own or third country. These changes would impact victims across the UK.
38. Article 14 of ECAT requires that victims should be given a "renewable residence permit" if needed "owing to their personal situation" or because they are co-operating in criminal proceedings.<sup>65</sup> The Explanatory Report to the Convention says, "*Immediate return of the victims to their countries is unsatisfactory both for the victims and for the law-enforcement authorities endeavouring to combat the traffic....The personal situation requirement takes in a range of situations, depending on whether it is the victim's safety, state of health, family situation or some other factor which has to be taken into account*".<sup>66</sup> The GRETA Report published on the 20 October, urged the Government to "*ensure that all victims of human trafficking who have received a positive Conclusive Grounds decision and whose immigration status requires it are issued a renewable residence permit when their personal situation warrants it or when they are co-operating with the authorities in criminal investigations or proceedings and their presence in the UK is required for this purpose, in accordance with Article 14(1) of the Convention*."<sup>67</sup>
39. Under the current non-statutory DLR policy, DLR is only granted where victims "are not eligible for any other form of leave" and they meet one of the following three criteria: assisting police with investigations into modern slavery; necessary because of personal circumstances or necessary to make a compensation claim.<sup>68</sup> Clause 53 places these grounds on a statutory basis.
40. However, Clause 53(2)(a) narrows the criteria from the current guidance for granting DLR by restricting it to what the Secretary of State considers necessary for, "*assisting the person in their recovery from any harm arising from their relevant exploitation to their physical and mental health and their social well-being*." While the Government argues this will "*will provide clarity on eligibility for a residence permit under Article 14(1)*",<sup>69</sup> **CARE is of the view that this is significantly narrower than the current policy to grant DLR if necessary to assist the person in their "personal situation" and is not in the spirit of ECAT which does not restrict assistance and support in this manner.** Notably,

<sup>65</sup> [Council of Europe Convention on Action against Trafficking in Human Beings CM 7465 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/101111/council-of-europe-convention-on-action-against-trafficking-in-human-beings-cm-7465.pdf)

<sup>66</sup> [Explanatory Report](#) on the European Convention on Trafficking, paras 181 and 184

<sup>67</sup> [Council of Europe GRETA Evaluation Report United Kingdom](#), 20 October 2021, paragraph 314, page 78

<sup>68</sup> Discretionary leave considerations for victims of modern slavery, [Version 4](#), December 2020, page 6

<sup>69</sup> Nationality and Borders Bill [Human Rights Memorandum](#), para 77, page 25

the Court of Appeal in *PK Ghana v SSHD* [2018] EWCA Civ 98 recognised that personal circumstances is a “wide concept.”<sup>70</sup> This goes to the point that needs arising from human trafficking are complex and by narrowing the criteria, it will prove difficult to distinguish what is a need arising from the relevant exploitation and what is already an existing need. Indeed, the IASC in her letter to the Home Office highlighted that, “*in reality it can be extremely difficult, if not impossible, to separate an individual’s current needs and vulnerabilities from those that existed prior to their exploitation.*”<sup>71</sup> There is also no criteria set out in either the Bill or Explanatory notes establishing what would constitute a harm related to modern slavery and what would not.

41. **CARE supports amendment 5 to Clause 53(2) so leave to remain in line is granted in line with Article 14 of ECAT by the removal of the narrowing of support for only being necessary for the purpose of assisting in recovery of harm caused directly by trafficking.**
42. Clause 53 also ensures there is no obligation to provide leave to remain (LTR) on the grounds of a victim’s need for support for their recovery **if a victim could receive support in their own country or a third country.** This restriction is likely to affect EU citizens who have recently become entitled to automatic consideration for DLR if they have no other right to remain,<sup>72</sup> since the Secretary of State is likely to argue that these citizens could receive support within the EU, although there is no requirement for there to be evidence that the victim *will* receive that support.
43. **CARE supports amendment 6 to Clause 53(3) and (4) tabled by the Labour Front bench to remove the criteria of not granting leave to remain if assistance can be provided in another country or compensation sought in another country.**
44. **There is also no stipulation in Clause 53 of the minimum amount of time for which LTR will be granted.** The Explanatory Notes say further details will be set out in the Immigration Rules.<sup>73</sup>
45. In 2017, a former UK Government Minister described discretionary leave as granted only where there are “*exceptional or compelling reasons*”<sup>74</sup> and provided data showing just 12% of all confirmed victims of modern slavery were given DLR in 2015 – 52 cases were EEA nationals and 71 non-EEA nationals.<sup>75</sup> A 2019 report by the Red Cross gives more recent data for 2015-2017 indicating that approximately 8-9% of all confirmed victims of modern slavery in the UK were granted DLR.<sup>76</sup> The Independent Anti-Slavery Commissioner has highlighted the long delays in decision-making on DLR and the low number of grants being made.<sup>77</sup> In 2021, GRETA also expressed concern that, “*DL is granted only in a small number of cases and for a short period, which does not ensure the needed stability and does not provide victims of trafficking, especially children, with a durable solution.*”<sup>78</sup>
46. CARE believes the DLR system needs reform and there a number of reasons why the longer term impact of a victims’ immigration status is important:
  - 46.1. Without immigration status, non-British nationals will not able to access mainstream services and find certainty and security. The Independent Anti-Slavery Commissioner recently said, “*There is a powerful moral argument for granting leave for those whom the state has concluded are victims of trafficking or slavery but there is also a practical one. Without such leave survivors, who are not claiming asylum or who have not been granted EU settled status, are not entitled to*

<sup>70</sup> [PK \(Ghana\), R \(On the Application Of\) v The Secretary of State for the Home Department \[2018\] EWCA Civ 98 \(08 February 2018\) \(bailii.org\)](#)

<sup>71</sup> [Letter to Home Secretary from Dame Sara Thornton](#) (IASC), 7 Sept 2021

<sup>72</sup> Modern Slavery: Statutory Guidance, Version 2.3, June 2021, *Op Cit*, para 7.2, page 57 and para 15.160, page 176  
Discretionary leave considerations for victims of modern slavery, Version 4, December 2020 *Op Cit*

<sup>73</sup> [Explanatory Notes](#), para 565, page 64

<sup>74</sup> [Letter to Frank Field from Sarah Newton MP](#), Home Office Minister, 17 Feb 2017

<sup>75</sup> *Ibid*

<sup>76</sup> [Hope for the Future](#): Support for survivors of trafficking after the National Referral Mechanism, July 2019, page 13

<sup>77</sup> IASC Commentary: Supporting survivors to regain independence, 4 January 2021, *Op Cit*

<sup>78</sup> [Council of Europe GRETA Evaluation Report United Kingdom](#), 20 October 2021, para 313, page 77

accommodation and have limited access to benefits – they will either be unable to leave safe houses or left destitute on the streets. Surely 2021 is the year to resolve this?”<sup>79</sup> The case for longer-term support is set out above, including preventing re-trafficking

- 46.2. Certainty over immigration leave means more victims are likely to support police investigations. We know that lack of clarity about immigration status and potential deportation means victims do not engage in criminal proceedings.
- 46.2.1. Uddin in his 2018 paper, *The Fight Against Modern Slavery and Human Trafficking: The Role of Victim Support in Prosecuting this Crime* states, “*the lack of immigration status and fear of deportation is identified by UK victims as a significant hurdle in them engaging with the authorities, as they fear removal to their country of origin. Both [victims of trafficking] VOTs and their US support providers identify access to the Trafficking Visa (T-Visa) as a significant factor in their ability to engage in criminal proceedings.*”<sup>80</sup>
- 46.2.2. The Work and Pensions Select Committee said, “*For some victims, certainty over their immigration status is a crucial enabler to their recovery and to assisting the police in prosecuting their exploiters.*”<sup>81</sup>
47. CARE believes, as proposed in the McColl/Duncan Smith Bill, and recommended by the Work and Pensions Select Committee, that once a victim receives a positive conclusive grounds decision **they should receive at least twelve months immigration leave** so they can access support to help them recover from their ordeal and rebuild their lives<sup>82</sup> (subject to a person not being a threat to national security).
48. **CARE supports amendment 7 to Clause 53(2) which would give modern slavery victims in the UK with a positive conclusive grounds decision leave to remain for a minimum of 12 months.**
49. This reform will provide stability and security for victims, make it far less likely that victims will be re-trafficked and **far more likely they will participate in court cases to secure the conviction of their traffickers**. The current conviction rate is very low, so it is in the Government's interest to ensure that traffickers are brought to justice since as the Independent Anti-Slavery Commissioner has stated, “*if [trafficking] offenders think that there is a very low risk of prosecution, then they are not deterred*” from exploiting victims.<sup>83</sup> As is stands, human trafficking remains a low risk, high reward crime.

	2018		2019		2020	
	Prosecuted	Convicted	Prosecuted	Convicted	Prosecuted	Convicted
Slavery servitude and forced labour	17	16	5	24	2	3
Human trafficking for sexual exploitation	28	34	2	21	11	1
Human trafficking for non-sexual exploitation	32	1	28	13	0	3

<sup>79</sup> [Independent Anti-Slavery Commissioner - IASC commentary: Supporting survivors to regain independence \(antislaverycommissioner.co.uk\)](https://antislaverycommissioner.co.uk)

<sup>80</sup> Uddin, N. *The Fight Against Modern Slavery and Human Trafficking, The Role of Victim Support in Prosecuting this Crime*. Winston Churchill Memorial Trust, 2017, page 23 <https://www.wcmt.org.uk/fellows/reports/fight-against-modern-slavery-and-human-trafficking>

<sup>81</sup> House of Commons Work and Pensions Committee, [Victims of Modern Slavery](#), HC 803, 30 April 2017., para 33

<sup>82</sup> House of Commons Work and Pensions Committee, [Victims of Modern Slavery](#), HC 803, 30 April 2017, para 44, page 17

<sup>83</sup> Independent Anti-Slavery Commissioner, [Annual Report 2019-2020](#), paragraph 2.3.1, page 22, page 22

Modern Slavery Act 2015	300	55	256	72	331	9
Total (all slavery and trafficking offences)	377	106	291	130	344	56

**Defendants prosecuted for modern slavery offences on an all offence basis, England and Wales, 2018-2020<sup>84</sup>**

50. The Government have said in their Modern Slavery Strategy that success under the ‘pursue’ strand of their Modern Slavery Strategy will mean, “*the disruption of criminals responsible for modern slavery, including their prosecution*”.<sup>85</sup> This is because if prosecution and conviction rates remain low traffickers will judge that, given the huge economic returns from trafficking, it is worth their taking the chance of being caught. In this context care for confirmed victims of trafficking is vital because their evidence in court is central to successful convictions. At the point at which a victim is confirmed to be a victim, they will usually be feeling very vulnerable and often in no place to decide whether they are ready to help the police and give evidence in court. They are also likely to disappear. If a confirmed victim receives support for 12 months this will give the person a sense of stability and security. It also means the police are likely to know where the victim is and be able to approach them to act as a witness in criminal cases against traffickers.

**Conclusion**

- 51. Whilst it is extremely concerning that issues relating to modern slavery are included in a Bill which deals with immigration, CARE urges Parliament to use this opportunity to put into legislation, adequate and necessary recovery period, support during the recovery period and provision of support for confirmed victims of modern slavery following a positive conclusive grounds decision.
- 52. Twelve months of support, accompanied by twelve months leave to remain for victims who are non-UK nationals in order to access this support, is essential to enable and empower victims of modern slavery to begin to rebuild their lives, move forward from their exploitation, and assist with criminal investigations to bring the perpetrators of this abuse to justice.
- 53. CARE urges Parliament to review the Nationality and Borders Bill with a victim-centred and trauma informed approach which takes into **account the needs of victims, and to adopt the amendments 1-7 and the recommendations outlined above.**

<sup>84</sup> Available at: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2020>  
The figures in this table relate to defendants prosecuted for modern slavery offences on an all offence basis, that is, the total number of offences a defendant is prosecuted for (principal offences plus non-principal offences).

<sup>85</sup> [Modern Slavery Strategy \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/92111/modern-slavery-strategy.pdf)