

Anti-Slavery International¹

Submission to the Nationality and Borders Public Bill Committee

This submission outlines Anti-Slavery International's principle concerns relating to Part 4 of the Nationality and Borders Bill (Modern Slavery). Anti-Slavery International believes that the following clauses will make it more difficult to identify, protect and support victims of modern slavery and will undermine efforts to prosecute traffickers.

Clause 46: Provision of information relating to being a victim of slavery or human trafficking

Clause 47: Late compliance with slavery or trafficking information notice: damage to credibility

These clauses introduce information notices which require a person making an asylum or human rights claim to provide any relevant information on their trafficking status before a specified date. If the applicant cannot provide a good reason for providing the information late, it will damage their credibility.

There are many reasons why a trafficked person is likely to provide late, incomplete and/or inconsistent information about their experience. These include: fear of their traffickers and the consequences for themselves or their families; distrust of the authorities; the impact of trauma or shame; not identifying their treatment as trafficking; or not knowing what information is relevant to their claim.

The Government's Statutory Guidance for the Modern Slavery Act 2015 recognises this and specifically states that victims of modern slavery may:

"... be reluctant to come forward with information, not recognise themselves as having been trafficked or enslaved, (and) tell their stories with obvious errors and/or omissions."

The Independent Anti-Slavery Commissioner concluded that information notices:

*"... do not take into account what the evidence tells us about disclosure of trafficking. 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. I'm concerned that these changes would make the identification of victims of modern slavery harder."*²

The logistical challenges around responding to information notices should not be underestimated. Two thirds of referrals into the National Referral Mechanism (NRM) are of foreign nationals,³ many of whom do not speak English and will need to get documents translated. Others may be illiterate, or have vulnerabilities or disabilities which mean they will struggle to understand what is required of them.

¹ Anti-Slavery International was founded in 1839 and is the oldest international human rights organisation. For further details see <https://www.antislavery.org>

² The Independent Anti-Slavery Commissioner, *Letter to the Home Secretary*, 6 May 2021.

<http://www.antislaverycommissioner.co.uk/media/1592/iasc-letter-to-home-secretary-priti-patel-mp-may-2021.pdf>

³ Home Office, *Modern Slavery: National Referral Mechanism and Duty to Notify Statistics*, 2020.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970995/modern-slavery-national-referral-mechanism-statistics-end-year-summary-2020-hosb0821.pdf

Under Clause 47, officials must consider late compliance with information notices as damaging the individual's credibility, unless there are good reasons why the information was provided late. The Bill does not indicate what would be considered a good reason for late disclosure.

Anti-Slavery International strongly believes that, even with the above caveat, the inclusion in primary legislation of a direction that a negative credibility finding must be made if applicants fail to submit information on time will result in many officials discounting evidence provided late.

This has already been seen in the asylum system where poor credibility assessments are the primary reason why so many asylum decisions are overturned on appeal (48% of asylum appeals were allowed in the first half of 2021).⁴

The Government stated in its New Plan for Immigration that the system needs to distinguish "*more effectively between genuine and vexatious accounts of modern slavery*"⁵ and the Bill's explanatory notes state that these clauses are intended to reduce "*misuse of the National Referral Mechanism*".⁶

However, there is little evidence to suggest that there is any significant misuse of the NRM taking place. The opposite is true, given that 92% of reasonable grounds decisions made by the Single Competence Authority in 2020 were positive.⁷ The other 8% received a negative decision, but that does not mean that their claim was without merit. Moreover, if a claim is unfounded, it is highly unlikely that a Home Office approved First Responder organisation would refer that person to the NRM in the first place.

Clauses 46 and 47 conflate late claims with unfounded claims and will foster a culture of disbelief towards information provided after the information notice deadline. It is likely to lead to poorer decision-making, both because of the direction to make negative credibility inferences regarding late information and because decisions are likely to be made before all the relevant information has been submitted. Consequently, these clauses can be expected to result in more trafficked people being denied the protection and support they need and many others being discouraged from coming forward.

The Government has not provided evidence of widespread abuse of the NRM which these clauses are supposed to address. However, if unfounded applications are being made, these could be effectively dealt with by improving training for first responders and case workers within the Single Competence Authority. This would achieve the Government's stated objective without the adverse effect on victims of modern slavery that will result from these clauses.

Clause 48: Identification of potential victims of slavery or human trafficking

Clause 48 changes the threshold for entering the NRM from having reasonable grounds to believe a person "*may*" be a victim of slavery to having reasonable grounds to believe a person "*is*" a victim of slavery.

The current threshold for a "reasonable grounds" decision is set purposefully low because it is the gateway to accessing support and services in the NRM, where a more thorough examination of the case takes place

⁴ Section 8 of the Asylum and Immigration (Treatment of Claimant, etc.) Act, 2004, requires decision makers to "take into account as damaging to the applicant's credibility" any behaviour they think is likely to conceal information, mislead, or obstruct a decision.

⁵ Home Office, *New Plan for Immigration: policy statement*, 22 July 2021. <https://www.gov.uk/government/consultations/new-plan-for-immigration/new-plan-for-immigration-policy-statement-accessible>

⁶ Home Office, *Nationality and Borders Bill – Explanatory notes* <https://publications.parliament.uk/pa/bills/cbill/58-02/0141/en/210141en.pdf>

⁷ Home Office, *Modern Slavery: National Referral Mechanism and Duty to Notify Statistics, 2020*. *Op. cit.*

(the “conclusive grounds” decision). It is extremely difficult to provide evidence that someone is a victim of modern slavery at an early stage, particularly because it takes time for the individual who has been exploited to build trust, recover from their experiences and have the confidence to tell their full story.

Increasing the burden of proof will lead to more survivors being wrongly refused support. This already happens under the current system. Between 1 January 2020 and 14 May 2021, 256 reasonable grounds decisions were reconsidered and 82% (210 cases) resulted in those decisions being overturned and the individual being given access to the NRM.⁸ By raising the standard of proof, Clause 48 will result in more people being wrongly denied access to the NRM and left vulnerable to further exploitation.

While it is possible to ask for a refusal to be reconsidered, this rarely happens in practice because few trafficked people are aware of this option or have the support to enable them to do so. There is no automatic review of a negative reasonable grounds decision, even though Anti-Slavery International has long argued that Multi-Agency Assurance Panels should review all such decisions and have the power to overturn incorrect decisions.

Many people who have been subjected to modern slavery are already fearful of engaging with the authorities. This is reflected in the fact that 2,178 people who were officially identified as potential victims refused to enter the NRM in 2020.⁹ Changing the threshold for entering the NRM will make it more difficult for victims of modern slavery and human trafficking to gain access to protection and assistance. This in turn will further undermine trust in the authorities and have a detrimental impact on their engagement with police investigations of traffickers.

Clause 51: Identified potential victims: disqualification from protection

Under Clause 51, where the Home Office considers that a potential victim is a threat to “public order” or has made a claim in “bad faith”, then it is no longer required to make a conclusive grounds decision or give the victim access to the NRM.

While it is reasonable to take measures to protect the public from dangerous criminals who pose a threat to their safety, this clause goes far beyond that. The definition of a person who is a threat to public order is extremely broad and includes those who have a prior conviction of 12 months or more (i.e. for non-violent crimes, including immigration offences).

It should be stressed that trafficking for criminal exploitation is the most common form of trafficking in the UK, accounting for more than a third of all trafficking referrals to the NRM in 2020 - not including a further 15% in which criminal exploitation takes place alongside other types of exploitation.

Clause 51 would exclude from protection victims who were forced to commit crimes as part of their exploitation and those whose prior convictions made them targets for traffickers in the first place. For example, around 45% of individuals in Hope for Justice’s current caseload have committed criminal offences and at least 29% of these would meet the criteria for exclusion under Clause 51.

⁸ After Exploitation. *New data: Majority of trafficking claims found to be ‘positive’ after reconsideration, 2021.*

<https://afterexploitation.files.wordpress.com/2021/07/64090-response.pdf>.

⁹ 93% of these cases were identified by government agencies or the police. Home Office, *Modern Slavery: National Referral Mechanism and Duty to Notify Statistics, 2020. Op. cit.*

Clause 51 also excludes those who have made a claim in “bad faith”. It is concerning that there is no definition in the Bill as to what constitutes “bad faith” or how this will be assessed. This grants the Home Office extensive powers and could be used to disqualify survivors who do not disclose the full details relating to their exploitation, or only do so belatedly, even though this is normal for people who have been subjected to traumatic events.

The Government argues that this “bad faith” provision is intended to block spurious claims, but if a claim is unfounded, it is highly unlikely that a First Responder – all of whom are approved by the Government – would refer that person to the NRM in the first place. In 2020, around two-thirds of referrals to the NRM came from the Home Office or the police.¹⁰

However, even if a First Responder did refer someone to the NRM who had an unmeritorious claim, it is still highly unlikely that the Single Competent Authority (which is part of the Home Office) would conclude that there are reasonable grounds to believe that the individual is a victim of trafficking and give them access to the NRM.

Consequently, there are already sufficient safeguards in place to tackle any “bad faith” applications and it is inappropriate for the Home Office to grant itself wide-ranging powers to exclude people who have been identified as potential victims from protection.¹¹

Clause 51 will have a serious impact on the UK’s ability to apprehend and punish traffickers. In 2020, trafficking cases that involved forcing individuals to engage in criminal activity made up nearly half the referrals to the NRM and involved more than 5,000 potential victims, just over half of whom were children.

Many of these individuals will have been specifically targeted by traffickers because they have previous convictions and are therefore unlikely to contact the authorities or seek help. The Independent Anti-Slavery Commissioner considers that Clause 51:

“... presents a real risk to victim engagement in prosecutions and consequently could significantly undermine our ability to bring traffickers to justice.”¹²

Anti-Slavery International believes these concerns are well-founded. As noted above, there is already a problem in establishing sufficient trust with survivors so that they are willing to engage with the authorities. Clause 51 will extenuate this problem as it threatens to deprive victims of protection because of previous offences they have committed or for undefined actions that the Government considers demonstrates “bad faith”.

Disrupting trafficking and bringing those responsible to justice often depends on the cooperation of survivors. Operation Fort and Operation Elibera resulted in the successful prosecution of 12 traffickers who had exploited hundreds of people. In both cases, testimony and statements from victims were crucial to securing convictions and included witness testimony from those who had been sentenced to more than 12

¹⁰ Local authorities made 28% of total referrals (90% of which were potential child victims) and NGOs referred just 8%. The Home Office, *Modern Slavery: National Referral Mechanism and Duty to Notify Statistics*, 2020. *Op. cit.*

¹¹ In 2020, just under 90% of those accepted into the NRM were found to have been trafficked. This indicates that there is no significant abuse of the system. The other 10% received a negative decision because they could not provide conclusive evidence of being trafficked, but that does not mean that their claim was without foundation. *Ibid.*

¹² The Independent Anti-Slavery Commissioner, *Letter to the Home Secretary*, 7 September 2021.

<https://www.antislaverycommissioner.co.uk/media/1668/iasc-letter-to-the-rt-hon-priti-patel-mp-home-secretary-march-2021.pdf>

months in prison. In Operation Fort around one-third of victims whose evidence was admissible in court had criminal convictions.¹³

This clause risks significantly reducing the number of trafficking victims willing to cooperate with police investigations because they cannot have confidence that they will be protected and supported if they do so.

Clause 51 does not target those offenders who pose a genuine risk to public safety and could be applied to the majority of trafficked people in the UK, including large numbers of children (e.g. those targeted as part of county lines drug trafficking). It will deter victims of modern slavery from coming forward to the authorities for support and is likely to seriously impede attempts to prosecute traffickers. It is also likely to encourage traffickers to further target ex-offenders as by doing so they increase their chances of being able to operate with impunity.

Clause 52: Identified potential victims etc. in England and Wales: assistance and support

While it is positive that the Government has included a commitment to provide assistance to survivors of modern slavery in primary legislation, Clause 52 is flawed because it does not define what support should be made available. Furthermore, the provision of support is caveated with the language “where necessary” or “where appropriate” thereby leaving the Secretary of State with broad powers to restrict or refuse assistance to survivors of modern slavery.

This is not consistent with Article 13 of ECAT which states that support “shall be” provided. It is also likely to exacerbate existing problems in the provision of support, in which there is confusion around what assistance survivors are entitled to and significant disparities in relation to the quality of support offered in different locations.

Furthermore, Clause 52 stipulates that support should only be provided to help survivors recover from harm that arises directly from their exploitation. This is problematic for two reasons.

First, it is extremely difficult to trace the origins of harms to specific experiences or disaggregate which harms come solely from their exploitation and which emanate from other aspects of a survivor’s life. The Salvation Army recently highlighted that those trafficked as part of county lines criminal networks had complex and intersecting needs which included mental health and addiction issues.¹⁴

The Independent Anti-Slavery Commissioner made this very point to the Home Secretary in September 2021 when she stressed that:

“...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.”¹⁵

¹³ The Independent Anti-Slavery Commissioner, *Letter to the Home Secretary*, 7 September 2021. *Op. cit.*

¹⁴ Salvation Army, *Modern Slavery Annual Report*, 2020. <https://www.salvationarmy.org.uk/modern-slavery/modern-slavery-latest-reports>

¹⁵ Independent Anti-Slavery Commissioner, *Letter to the Home Secretary*, 7 September 2021. *Op. cit.* <http://www.antislaverycommissioner.co.uk/media/1668/iasc-letter-to-the-rt-hon-priti-patel-mp-home-secretary-march-2021.pdf>

Second, survivors cannot fully recover unless all the harms they have suffered, including the pre-existing vulnerabilities which left them susceptible to exploitation, are dealt with. Public Health England has also underlined that the harms suffered by survivors are not restricted to the period in which they suffered exploitation:

“Individuals who have been trafficked are likely to experience multiple physical and mental health risks prior to, during and after their trafficking experiences, and many suffer acute and long-term health problems.”¹⁶

By restricting access to support in this way, Clause 52 will result in many survivors not being able to fully recover from their experiences. Others will be at risk of being exploited again because the issues that made them vulnerable in the first place have not been addressed.

Clause 53: Leave to remain for victims of slavery or human trafficking

Discretionary leave is rarely granted to survivors of modern slavery. Between January 2018 and July 2020, 3,693 people received positive conclusive grounds decisions recognising them as survivors of modern slavery, but just 6% (218 people) received grants of discretionary leave. Furthermore, the numbers granted leave to remain have been falling each year since 2018.¹⁷

Securing leave to remain is pivotal in helping survivors to recover from their exploitation because it removes the uncertainty about what will happen to them in the immediate future and provides them with the stability they need to consider their options and rebuild their lives. The Independent Anti-Slavery Commissioner recently underlined that:

“Without such leave, survivors may be left with limited or no access to welfare benefits and entitlements, leaving them vulnerable to destitution and further exploitation. In addition, I have heard from many frontline practitioners how securing leave can have a significant impact on improving the mental health of survivors, offering stability and a chance to focus on recovery.”¹⁸

Furthermore, even when discretionary leave is granted to survivors, the length of the leave provided is often extremely short and so does not facilitate recovery from trauma and cooperation in legal proceedings.

In October 2021, the Council of Europe Group of Experts on Action Against Trafficking in Human Beings (GRETA) raised concerns in its report on the UK that discretionary leave was:

“...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. GRETA urges the UK authorities to ensure that all victims of human trafficking who have received a

¹⁶ Public Health England, *Human Trafficking: Migrant Health Guide*, June 2017. <https://www.gov.uk/guidance/human-trafficking-migrant-health-guide>

¹⁷ These statistics do not include those who were granted asylum or humanitarian protection. Data tables released following a Freedom of Information request made by ECPAT UK. <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=6fe8c52a-2290-4058-98da-68c8f1b534bd>

¹⁸ The Independent Anti-Slavery Commissioner, *Letter to the Home Secretary*, 7 September 2021. *Op. cit.*

positive Conclusive Grounds decision and whose immigration status and personal situation require it are issued a renewable residence permit, in accordance with Article 14(1) of the Convention.”¹⁹

The Government itself acknowledges in its New Plan for Immigration that, for survivors:

“... certainty over their immigration status is a crucial enabler to their recovery and to assisting the police in prosecuting their exploiters.”²⁰

Clause 53 does not provide this certainty. Furthermore, it only provides leave to remain to confirmed victims of modern slavery when it is necessary to assist the person to recover from harm resulting directly from their exploitation. This defines entitlement extremely narrowly and is unpractical as it is extremely hard to separate harm that made an individual vulnerable to trafficking from harm that resulted from their exploitation.

Clause 53 further restricts access to leave to remain for survivors by stating that even where an individual does need assistance to recover from their exploitation, they will still be ineligible for leave if the Home Secretary considers that support could be provided in their own country or another country to which they can be removed.

The Bill provides no detail on how the Secretary of State would make this judgement or if she would be required to ensure that support will be provided (not simply that it is available) in the country they are being sent to. Even where this is the case, other factors need to be considered, such as whether relationships of trust have been established in the UK and how being removed may undermine the survivor’s recovery or a potential prosecution.

Anti-Slavery International believes that Clauses 53 could significantly reduce the number of survivors eligible for leave to remain in the UK and recommends that all confirmed victims of modern slavery who have insecure immigration status should be granted leave to remain for at least 12 months.

¹⁹ GRETA, UK: *Third Round Evaluation*, 20 October 2021. <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>

²⁰ Home Office, *New Plan for Immigration: policy statement*, 22 July 2021. <https://www.gov.uk/government/consultations/new-plan-for-immigration/new-plan-for-immigration-policy-statement-accessible>