

19 April 2021

Chris Philp MP
Minister for Immigration, Compliance and the Courts
Home Office
2 Marsham Street
London
SW1P 4DF

Dear Minister,

Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2021

I write further to my letter of 8 March 2021 in relation to the Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2021 and the intention to bring those granted a positive Reasonable Grounds decision through the National Referral Mechanism (NRM) fully within the scope of the Adults at Risk (AAR) in Immigration Detention Statutory Guidance. My office has now had the opportunity to engage with the sector to discuss this change and understand their concerns in more detail.

Current Adults at Risk in Immigration Detention Statutory Guidance and potential victims of modern slavery

At present, the Adults at Risk (AAR) Statutory Guidance¹ requires decisions regarding the detention of individuals who have received a positive Reasonable Grounds decision to be made with reference to the separate Modern Slavery Act 2015 Statutory Guidance². This guidance states that where individuals are being held in detention, a positive Reasonable Grounds decision does not require the individual to be released where there are reasons of public order not to do so. In practice, unless there are public order concerns, current processes generally result in most potential victims of modern slavery being released from detention. The recent Home Office report on issues raised by people facing return in immigration detention confirmed that in 2019, of the 1,949 individuals referred into the NRM after being detained, 89% received a positive Reasonable Grounds decision and 98% were then subsequently released from detention³.

Proposed changes to the Adults at Risk Statutory Guidance

In your letter to me dated 25 February 2021, you describe this current process as a 'policy anomaly'. The draft revised Guidance on AAR in immigration detention⁴ therefore removes the section on

¹ Home Office (2018) '[Immigration Act 2016: Guidance on adults at risk in immigration detention](#)'

² Home Office (2020), '[Modern Slavery: Statutory Guidance for England and Wales \(under s49 of the Modern Slavery Act 2015\) and Non-Statutory Guidance for Scotland and Northern Ireland](#)'

³ Home Office (2021), '[Issues raised by people facing return in immigration detention](#)'

⁴ Home Office (2021), '[Draft revised guidance on adults at risk in immigration detention](#)'

modern slavery, meaning that moving forward, detention considerations for potential victims of modern slavery will be made using the same criteria as other categories of vulnerability as set out in the AAR Statutory Guidance. Within your letter, you state that the AAR Statutory Guidance is well-established having come into force on 12 September 2016 and that it provides an appropriate framework for all detention considerations of potential victims of modern slavery.

The impact of this change on potential victims of modern slavery

Having spoken to colleagues within the sector, there is significant concern that this change will result in an increased number of potential victims of modern slavery being detained and spending longer periods in detention, with their release dependent on weighing up vulnerability against immigration factors and a requirement for medical evidence demonstrating the harm caused by detention. I acknowledge that the Modern Slavery Act 2015 Statutory Guidance states that detention 'may constitute appropriate accommodation'⁵, however I am concerned that potential victims of modern slavery are particularly vulnerable to suffering harm in detention and that there can be challenges to ensuring that all are able to access their entitlements under the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) 2005.

Having looked at the data on the AAR policy, between November 2017 and October 2018, the rates of rejection for detention by Detention Gatekeepers due to the person being an AAR fluctuated between 3.8% and 36.2%⁶. Despite the considerable variation, these figures are significantly lower than the percentage of victims of modern slavery released under current policy. In their May 2020 report of findings from scrutiny visits to Immigration Removal Centres (IRCs), the HM Chief Inspector of Prisons noted that the Home Office had assessed 39% of detainees to be at Levels 2 or 3 of the AAR policy⁷. I recognise that this figure was impacted by the numbers at risk due to Covid-19, however it still demonstrates a considerable number of vulnerable individuals who had not been released from detention under the current AAR policy, largely due to their status as Foreign National Offenders.

Whilst I acknowledge the rationale for bringing all categories of vulnerability under the AAR policy, there are multiple factors that are specific to victims of modern slavery that are significant. As you highlight in your letter, under Article 13 of ECAT potential victims of modern slavery with a positive Reasonable Grounds decision are entitled to a reflection and recovery period where they cannot be removed from the UK. I am aware that in order to detain there must be 'a realistic prospect of removal within a reasonable timescale'⁸. It is therefore important to highlight that in 2019, it took the Home Office Single Competent Authority an average of 452 days to make a Conclusive Grounds decision⁹.

In addition, the updated Guidance on AAR also states that when balancing risk against immigration control factors, where an individual has been living and working illegally in the UK for some time this should be regarded as a matter of 'non-compliance'. For potential victims of modern slavery, living

⁶ Independent Chief Inspector of Borders and Immigration (2020), ['Annual inspection of Adults at Risk in Immigration Detention 2018-2019'](#)

⁷ HM Chief Inspector of Prisons (2020), ['Report on short scrutiny visits to Immigration Removal Centres'](#)

⁸ Home Office (2021), ['Draft revised guidance on adults at risk in immigration detention'](#)

⁹ Office of the Independent Anti-Slavery Commissioner (2020), ['Independent Anti-Slavery Commissioner Annual Report 2019-2020'](#)

and working illegally in the UK may have been as a direct result of their trafficking experience. I understand that it is your intention to publish updated caseworker guidance and to ensure that caseworkers are aware of these specific factors that apply to potential victims of modern slavery. **This is essential and I request that my office is sighted on a draft version of this guidance prior to publication.**

Wider application of the Adults at Risk policy

In relation to the application of the AAR policy more broadly, I am aware that there continue to be concerns regarding its effectiveness in identifying, reviewing and managing vulnerable individuals in detention. In 2018, the Home Secretary commissioned the Independent Chief Inspector of Borders and Immigration (ICIBI) to conduct an annual inspection to report on the AAR policy. The first inspection report¹⁰, published in April 2020, noted that there is “a lot more that the Home Office can and should do to make each component of the AAR policy more efficient and more effective”. It therefore made eight recommendations, of which one was not accepted, two were accepted and five were partially accepted by the Home Office. **I would welcome an update on progress in relation to implementing these recommendations.**

The first ICIBI annual inspection also specifically noted that “the Home Office does not currently have a single measure of ‘success’ of the Adults at Risk policy”, but highlighted that the roll-out of Atlas would enable improved capture of data on AAR. **In bringing potential victims of modern slavery fully within scope of the AAR policy, it is vital that the impact of this change is closely monitored by the Home Office and that it forms part of the framework for future inspections carried out by ICIBI.**

Engagement with the sector in relation to the updated AAR Statutory Guidance

I am also aware that there are considerable concerns within the sector regarding the steps that have been taken in order to consult on this change. I understand that a small number of meetings took place last year in relation to this matter, which included some organisations from the anti-slavery sector, but that the proposals could not be shared outside of these forums. As stated in my previous letter, I was disappointed to learn that my office had not been included in these discussions and would have welcomed the opportunity to be sighted on the proposed changes at the earliest stage. I note that some organisations within the sector have made submissions to the House of Lords Secondary Legislation Scrutiny Committee, who have suggested that Parliament may wish to give special attention to this issue and expressed shared concerns regarding the approach to consultation¹¹.

I look forward to receiving your response. In the interests of transparency, I request that you respond in a way that enables me to publish your letter on my website.

Yours sincerely,



Independent Anti-Slavery Commissioner

¹⁰ Independent Chief Inspector of Borders and Immigration (2020) [‘Annual inspection of Adults at Risk in immigration detention \(2018-2019\)’](#)

¹¹ House of Lords Secondary Legislation Scrutiny Committee (2021), [‘49th Report of Session 2019-2021’](#)



Dame Sarah Thornton DBE QPM
Office of the Independent Anti-Slavery Commissioner
5th Floor, Globe House
89 Eccleston Square
SW1V 1PN

Monday 7 June 2021

Dear Dame Sara,

Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2021

I thank you for your letter of 19 April 2021 in relation to the Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2021. I welcome the attention you have given to this matter and am writing in response to the questions that you raise.

Changes to the Adults at Risk Statutory Guidance

The Regulations, laid before Parliament on 25 February 2021, rectify an anomaly in our previous policy by bringing detention decisions for potential and confirmed victims of modern slavery fully within the scope of the Adults at Risk in Immigration Detention (AAR) policy. This ensures a more consistent approach to detention decision making across all categories of vulnerability and enables a more rounded assessment of detention decisions for potential victims of modern slavery.

We recognise that potential victims of modern slavery may be particularly vulnerable to suffering harm in detention. The basis of the (AAR) policy is to enable officials to identify vulnerable individuals and make a rounded assessment of the appropriateness of their detention.

As you set out, in line with the *Hardial Singh* principles the detention power can only be exercised where there is a realistic prospect of removal within a reasonable timeframe. We accept that the Recovery and Reflection period and length of time it takes to receive a Conclusive Grounds decision mean that, in many cases, detention of potential victims of modern slavery will not be appropriate. However, that will not always be the case where continued detention is justified, for example by particularly serious public protection issues.

There are concerns about the potential for a referral to the National Referral Mechanism (NRM) to be used to frustrate Immigration Enforcement processes or to gain access to support inappropriately. For example, there has been a growth in NRM referrals being

made after a person enters immigration detention. In 2019, 16% of people detained within the UK following immigration offences were referred as potential victims of modern slavery. This is up from just 3% in 2017.

Whilst these referrals, including from those who pose a public order risk, may be genuine, this raises legitimate concerns that some referrals are being made late in the process to frustrate immigration action and that legitimate referrals are not being made in a timely way. The New Plan for Immigration will address these concerns.

We fully accept that there are specific considerations which apply to potential victims of modern slavery in immigration detention. Caseworker guidance which sets out the process for staff to follow when making detention decisions for potential or confirmed victims of modern slavery, including the particular considerations that need to be taken into account, was published on 25 May 2021 and can be found on GOV.UK.

The detention decision-making process for potential victims of modern slavery includes additional safeguards including an assessment of the recovery needs of the individual. This will ensure that detention is only maintained where it is consistent with the obligations to support victims of modern slavery under the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT).

We also recognise that a potential victim of modern slavery's compliance or criminal history may have been influenced by their trafficking or their experience of control by a perpetrator and this should be factored into detention decision making. This is reflected in the caseworker guidance.

Wider application of the AAR policy

A programme of work to improve and reform immigration detention is ongoing. This aims to: minimise the use of immigration detention (using it only where it is essential to secure removal and protect the public, and as briefly as possible); strengthen decision-making and provide safeguards for the vulnerable; improve transparency; and ensure that everyone is treated with dignity in an estate fit for purpose, while continuing to tackle abuse of the immigration system.

External reports, including Stephen Shaw's two reviews and the first ICIBI report, form an important part of that work.

We recognise the importance of monitoring the impact of this policy change and, as with all Home Office policies, this policy change will be subject to periodic review. The ICIBI's inspections are conducted independently. However, this policy change will fall within the broad scope of the ICIBI's inspection into Adults at Risk in Immigration Detention and so will likely fall for review in future inspections.

Engagement with the sector in relation to the updated AAR Statutory Guidance

The Home Office undertook targeted engagement on this proposal with key stakeholders. These stakeholders were contacted as having previously been in discussions with the Home Office on changes to the Adults at Risk Policy and were mainly drawn from membership of the Detention sub-group of the National Asylum Stakeholder Forum.

I apologise that your office was not included within these discussions. This was not a deliberate decision and we welcome the opportunity to engage more closely on the detail of this policy change and other similar matters going forwards.

You will be aware that the Statutory Instrument was debated in Parliament on 28 April. I welcomed this debate and the opportunity for Parliament to scrutinise this policy change ahead of the Regulations taking effect on 25 May 2021.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'C. Philp', with a horizontal line extending to the right.

Chris Philp MP
Minister for Immigration Compliance and Justice