

7 September 2021

Rt Hon Priti Patel MP
Home Secretary
Home Office
2 Marsham Street
London
SW1P 4DF

Dear Home Secretary,

The Nationality and Borders Bill

I write in my capacity as Independent Anti-Slavery Commissioner in response to the Nationality and Borders Bill. This follows my letter of 6 May 2021 in response to the New Plan for Immigration consultation. I comment on the Bill as a whole insofar as the measures may impact victims of modern slavery, focusing in more detail on Part 4 on modern slavery.

I am pleased that the government response to the New Plan for Immigration consultation acknowledged the need to identify and mitigate unintended consequences and ensure safeguards are in place to protect the vulnerable. The response also recognises concerns about a lack of detail and evidence base for policies.¹ Having read the Bill, I remain concerned that plans will make the identification of victims of modern slavery harder and will create additional vulnerabilities.

I am particularly concerned about Clause 51 and the relatively low threshold for defining public order grounds which would restrict foreign nationals who have received sentences in excess of twelve months from being able to access support through the National Referral Mechanism (NRM). There is a real risk this will limit victim engagement in prosecutions and therefore significantly undermine the ability of law enforcement to bring traffickers to justice. Finally, I would highlight the lack of detail on provisions for children. Reforms must put children's rights and protections first and decisions taken with their best interests as a priority.

My Strategic Plan highlights the importance of including survivors' voices within anti-slavery work.² I am aware that as part of the consultation process, civil society colleagues from the asylum and refugee sector were able to facilitate three separate sessions between Britain Thinks and those from the Voices Network with lived experience. To my knowledge, engagement of this scale was not replicated with survivors of modern slavery which is a missed opportunity.

¹ HM Government (2021) [NEW PLAN FOR IMMIGRATION - Consultation on the New Plan for Immigration: Government Response](#).

² Independent Anti-Slavery Commissioner (2019), [Independent Anti-Slavery Commissioner Strategic Plan 2019-2021](#).

The devastating situation in Afghanistan is a stark reminder of the vital importance of safe routes for refugees and asylum seekers. I welcome the Afghan citizens' resettlement scheme and recognise the significant challenges in delivering this. I am not in a position to judge whether these specific plans or broader intentions to introduce 'safe and legal routes' through non-legislative changes go far enough. However, what is clear from the consultation and particularly responses from those with lived experience, is that such routes are often inaccessible.³

In considering the New Plan for Immigration and the Nationalities and Borders Bill as a whole, one of my central concerns has been failure to take account of the trauma experienced by modern slavery victims. These worries were clearly shared by other stakeholders and those who have experienced trauma were felt to be among the groups likely to be most affected by the plans.⁴ The Bill provides for a number of notices, requiring people to bring forward grounds for protection and human rights claims within a set time period. Whilst criteria are yet to be clarified, I have concerns that such plans 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.⁵ I am concerned that these changes would make the identification of victims of modern slavery harder.

I support the government's focus on disrupting criminal networks, but 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. Differential treatment of refugees based on the nature of their arrival may only serve to exacerbate vulnerability. Apart from any adverse impact on potential victims of modern slavery there is a lack of evidence that harsher penalties will have the deterrent effect envisaged. Research into factors influencing destination preferences questions the extent to which deterrence policies have their intended or assumed effects.⁶ In fact, a number of research papers identify low levels of awareness of countries' policies among those seeking asylum, pointing to other more influential factors.⁷ Not only is there significant potential to further harm genuine trafficking victims, but there is a significant risk that the measures will not work to deter illegal entry into the UK as envisaged.

My response to the New Plan for Immigration noted the lack of data about the alleged abuses of the system. Data available at the time showed an increase in the number and proportion of people in immigration detention being referred into the NRM in recent years.⁸ Additional data has now been published, showing that 27 percent (1,005) of people exiting immigration detention in 2020 were referred into the NRM whilst detained.⁹ I understand concerns about some referrals being made late in order to frustrate immigration processes, but a range of factors could influence these

³ Home Office (2021), '[Report in relation to legal routes from the EU for protection claimants, including family reunion of unaccompanied children](#)'.

⁴ Home Office (2021), '[NEW PLAN FOR IMMIGRATION - Consultation on the New Plan for Immigration: Government Response](#)'.

⁵ Oram, S. & Domoney, J. (2018), '[Responding to the mental health needs of trafficked women](#)'.

⁶ Crawley, H. and Hagen-Zanker, J. (2018), '[Deciding Where to go: Policies, People and Perceptions Shaping Destination Preferences - Crawley - 2019 - International Migration](#)'.

⁷ Gower, M. (2021), '[House of Commons Briefing: Nationality and Borders Bill](#)'.

⁸ In 2018, five percent (718) of people exiting detention had been referred into the NRM whilst in detention, increasing to 16 percent (1,767) in 2019. Home Office (2021), '[Issues raised by people facing return in immigration detention](#)'.

⁹ Home Office (2021), '[Update on modern slavery referrals from detention and prisons](#)'.

numbers including changes over time in the detained population and improved awareness of modern slavery.

Stephen Shaw's independent review into the welfare in detention of vulnerable persons included a focus on identifying vulnerability and appropriate action, making a series of recommendations in this respect. Whilst subsequent inspections and inquiries have drawn attention to ongoing issues with processes surrounding detention of vulnerable people,¹⁰ the Home Office has no doubt increased its focus on vulnerability and committed to important progress. This has included strengthening face to face engagement and ensuring vulnerability considerations are prioritised, particularly through the detention engagement teams.¹¹ I recently visited Colnbrook Immigration Removal Centre and there has been a clear emphasis on improving knowledge and awareness of modern slavery among staff. Against this complex backdrop it is difficult to draw a causal link between increased NRM referrals and abuse of the system.

I will now set out my reflections against each of the clauses contained within Part 4 of the Bill.

Clause 46 - Provision of information relating to being a victim of slavery or human trafficking and Clause 47 Late compliance with slavery or trafficking information notice: Damage to credibility

The introduction of Trafficking Information Notices will require the recipient to provide the Secretary of State (and any other competent authority specified in the notice) with any relevant status information before a specified date. In the absence of good reason for the late provision of the information, this will be seen as damning to an individual's credibility.

As highlighted earlier in this letter, any such process needs to recognise that trauma can lead to memory loss and inconsistencies in recalling experiences. This is reflected within the Modern Slavery Statutory Guidance, which notes that victims' early accounts may be affected by the impact of trauma. This can result in delayed disclosure, difficulty recalling facts, or symptoms of post-traumatic stress disorder.¹² In their response to the New Plan for Immigration, the Salvation Army highlighted how within both NRM interviews and during the reflection and recovery period, many victims initially recall their experiences with contradictions or inconsistencies.¹³

It is recognised that for those who have experienced trauma, it can often take a considerable amount of time before they feel comfortable to disclose fully what has happened to them. It is therefore problematic that the Bill does not specify the timescales within which individuals would be required to provide this information. The proposal that late compliance may be interpreted as damaging to credibility also fails to take into account the severe trauma suffered by some victims.

¹⁰ Independent Chief Inspector of Borders and Immigration (2020) [Annual inspection of 'Adults at Risk in Immigration Detention' \(2018-19\)](#) ; [Immigration detention - Home Affairs Committee - House of Commons](#).

¹¹ House of Commons Home Affairs Committee (2019), ['Immigration detention: Government Response to the Committee's Fourteenth Report 2017-19'](#).

¹² 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'](#).

¹³ The Salvation Army (2021), ['New Plan for Immigration Consultation: Written evidence submitted by The Salvation Army'](#).

Case study provided by the Helen Bamber Foundation

“X is from Cote D’Ivoire and was exposed to sexual violence and prolonged trauma from a very young age. The exploitation she experienced in her early childhood continued into her marriage, after she was sold to her husband by her grandfather. In order to escape this abuse, she fell victim to a group of traffickers in Cote D’Ivoire. She was held captive and repeatedly raped in exchange for somewhere to live. X was then trafficked to the UK where her exploitation continued. She was housed in various flats in London and was forced into prostitution for around 10 years.

X escaped her traffickers and eventually applied for asylum. She failed to disclose her trafficking experience in the UK in some of her early interactions with the Home Office. These inconsistencies contributed to her receiving a negative conclusive grounds decision on her trafficking claim. X’s initial non-disclosure should be understood in the context of her prolonged exposure to trauma at an early age. By the time she arrived in the UK, her PTSD symptomatology was complex and entrenched. Her symptoms include involuntary numbing, avoidance, dissociation, and shame. The fear of reprisals by her traffickers and the stigma associated with her experience, meant she felt unable to disclose her experience to those whom she trusted, let alone immigration officials or solicitors. It was only once X had built a trusting relationship with a female caseworker at a charity, was she able to describe her experience in the UK and be referred to the NRM. X has subsequently been granted leave as a victim of trafficking”.

For individuals who do not speak English as a first language, or who may have limited literacy skills, it is likely to be extremely difficult for them to provide a response to the notice without adequate support. While Clause 22 clearly states that up to seven hours of civil legal services may be available to support the completion of a Priority Removal Notice, the Bill does not confirm whether such provision would also be made available to aid the completion of a Trafficking Information Notice. It is essential that the seven hours of civil legal services is also provided to support individuals to respond to a Trafficking Information Notice in order to avoid victims of severe trauma remaining unidentified.

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

This clause will require an amendment to the Modern Slavery Act 2015 to substitute where there are reasonable grounds to believe that an individual ‘may’ be a victim of modern slavery with ‘is’ a victim of modern slavery. I am aware that there is concern among the sector that this clause will significantly restrict opportunities for individuals to be referred into the NRM and receive support. On the other hand, police forces have argued that this low threshold is problematic because they are required to record reasonable grounds decisions as crimes and investigate them. In some instances, NRM referrals can be poor quality with little information to allow the police to conduct their enquiries. On balance, I think that making the reasonable grounds threshold consistent with the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) is appropriate. Significantly, the Modern Slavery Statutory Guidance contains guidance for decision makers in the Single Competent Authority (SCA) which already uses the terminology ‘is’. It states, on page 114, that:

“The test the SCA must apply is whether the statement ‘I suspect but cannot prove’ the person is a victim of modern slavery (human trafficking or slavery, servitude, or forced or compulsory labour)’:

- *is true; or*
- *whether a reasonable person having regard to the information in the mind of the decision maker, would think there are Reasonable Grounds to believe the individual is a victim of modern slavery (human trafficking or slavery, servitude or forced or compulsory labour)’.*

This suggests that ‘is’ a victim of modern slavery is the threshold that is already being used in practice by decision makers. There is currently a distinction between the definition set out within legislation in Scotland and Northern Ireland compared to England and Wales, yet I am not aware that this difference has had any impact on decision making in practice. Lastly, the term ‘reasonable grounds’ is used extensively in the criminal law and is understood to be a very low threshold - to be more than a hunch or suspicion, but less than a balance of probabilities.

Clause 49 - Identified potential victims of slavery or human trafficking: recovery period

This clause will place into primary legislation that a conclusive grounds decision may not be made ‘before the end of the period of 30 days beginning with the day on which the positive reasonable grounds decision was made’. During this time, the identified potential victim may not be removed from, or be required to leave, the UK.

While some have voiced concern about the fact that 30 days is a reduction from the period of at least 45 days set out in the Modern Slavery Statutory Guidance, in reality the system is so slow that the average length of time for a conclusive grounds decision in 2020 was 465 days.¹⁴

There is however the potential for this clause to have unintended negative consequences in cases where there is benefit in making the conclusive grounds decision at the same time as the reasonable grounds decision. Within the current pilot to test approaches to devolving NRM decisions for children to local safeguarding partners, there is the ability for reasonable grounds and conclusive grounds decisions to be made in the same meeting if there is sufficient information available to do so.¹⁵ While there can be benefit to NRM decisions taking longer as this can enable potential victims to access support for an extended period, the significant delays to NRM decision making is particularly problematic where there are criminal proceedings. In such circumstances, it can be advantageous for these decisions to be made more quickly. The flexibility introduced by the pilots to make both trafficking decisions in the same meeting is therefore welcome, and the Bill needs to recognise this.

Clause 50 – No entitlement to an additional recovery period etc.

This clause prohibits individuals who have already received a positive reasonable grounds decision from seeking a further recovery period for a trafficking experience that took place ‘wholly before the first reasonable grounds decision’. I appreciate the rationale for this clause and support the need to address multiple trafficking claims intended to delay removal. On this basis, I agree that the use of the term ‘wholly before’ when limiting entitlement to a further recovery period is sensible with the following caveat.

¹⁴ Independent Anti-Slavery Commissioner (2021), [‘Independent Anti-Slavery Commissioner Annual Report’](#).

¹⁵ Home Office (2021), [‘Devolving child decision making pilot programme: General guidance’](#).

Victims and survivors of modern slavery may feel more able to disclose their trafficking experiences relating to one particular form of exploitation than another. Within sexual exploitation for example, shame and mistrust can be especially pronounced leading survivors to conceal their experiences.¹⁶ There have been cases of survivors disclosing forced labour more readily and earlier than sexual exploitation. The explanatory notes for the Bill set out that only one period of recovery will be provided to a potential victim unless the Secretary of State considers it appropriate to provide a further recovery period due to the particular circumstances of the case. To allow SCA decision makers to assess each case on its own merit, it is important that there is sufficient flexibility within guidance and that the circumstances within which a further recovery period would be appropriate are clearly set out.

Clause 51 - Identified potential victims etc: disqualification from protection

This clause sets out the exemptions to providing a recovery period to a potential victim of modern slavery based on the grounds that an individual is a threat to public order or has claimed to be a victim of slavery or human trafficking in bad faith. Clause 51 (2) proposes that the requirement to make a conclusive grounds decision and any prohibition on removing the person or requiring them to leave the UK will cease to apply in such circumstances. I have grave concerns about this clause because it casts a wide net, with the potential to prevent a considerable number of potential victims of modern slavery from being able to access the recovery and reflection period granted through the NRM. Without such support prosecution witnesses will be unable to provide witness evidence and this will severely limit our ability to convict perpetrators and dismantle organised crime groups.

I understand the rationale for defining the grounds for a public order exemption and I recognise the need to include serious offences such as those listed in Schedule 4 of the Modern Slavery Act 2015 and threats to national security. However I am concerned category (f), that a person is 'a foreign criminal within the meaning given by section 32(1) of the UK Borders Act 2007', is far too broad. This includes those who are sentenced to a period of imprisonment of at least twelve months, or those who commit an offence which is specified by order of the Secretary of State under section 72(4)(a) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (serious criminal) and the person is imprisoned.

Home Office officials have clarified that this clause will include sentences for crimes committed both within and outside of the UK. In my view, this is a low threshold and will encompass a wide range of offences. Sentences given outside the UK may not reflect the sentencing guidelines in the UK which may draw in minor offending to this provision. Data from Hope for Justice demonstrates that of their current live caseload, 29% of individuals have committed offences that would meet the criteria for exemption under public order grounds¹⁷. A further 13% have committed wider offences that may/may not meet the criteria for a public order exemption and 3% have a conviction but the details of this are unknown.

¹⁶ Oram, S and Domoney, J (2018), [Responding to the mental health needs of trafficked women](#)'.

¹⁷ Data from Hope for Justice is taken from "live" Independent Modern Slavery Advocacy files which have both potential litigation issues and ongoing psycho-social support needs for the survivor. This currently excludes the 'litigation only' caseload i.e. this caseload would include cases where there is ongoing civil/criminal litigation but support needs outside litigation have been met.

Case study – Operation Elibera

“In 2018 a Romanian trafficker was convicted of offences under the Modern Slavery Act 2015 having trafficked at least 15 people from Romania and forcing them to work in the construction industry without pay whilst being threatened with violence.

He received a seven year sentence and was also given a Slavery and Trafficking Prevention Order. Each victim received compensation of approximately £1000.

Of the 15 potential victims identified, two provided statements to support the police investigation. One of these witnesses, whose evidence was significant in securing the conviction, had three previous convictions in Romania all of which attracted sentences in excess of 12 months”.

While Section 45 of the Modern Slavery Act 2015 provides a statutory defence for victims of modern slavery, this is not applicable for Schedule 4 offences and there is still a lack of knowledge of this defence across the criminal justice system.¹⁸ As a result, there continue to be circumstances where victims of modern slavery are prosecuted for crimes committed whilst in a situation of exploitation. We know that traffickers already have a modus operandi of recruiting individuals with offending history, including those who have recently left prison, who are less likely to engage with authorities and seek support. Should this cohort be prevented from accessing support through the NRM, they are likely to be increasingly targeted by traffickers.

In addition to the risk that genuine victims may be prevented from accessing support due to a public order exemption, therefore increasing their vulnerability to further exploitation, I am particularly concerned about the potential unintended consequences that this clause may have on our ability to prosecute offenders. Effective support and the opportunity to build rapport with law enforcement can be crucial in maintaining the engagement of victims and survivors as witnesses through what can often be lengthy investigations. The recent evaluation of the Justice in Care victim navigator role identified that 87% of victims supported by the navigators engaged with police investigations, compared to 33% nationally.¹⁹ Victim testimony can be extremely powerful and hearing victims’ evidence in person often brings a case alive for the jury, allowing them to fully understand the control that traffickers were able to wield on their victims.

Case study – Operation Fort

During the course of Operation Fort, the investigation team were able to identify 92 victims, all of whom were Polish nationals. It was proved that there were around 400 victims in total. They would often describe themselves as in a difficult situation; commonly a mixture of being unemployed, homeless, recently released from prison, and addicted to alcohol.

Through three trials, 11 traffickers have been convicted, with 55 ½ years’ custody sentenced so far (three offenders awaiting sentence at the time of writing). To achieve these convictions, the courts heard evidence from around 60 victims, some in person, some via video link and some statements were read out to the court. Of the victims whose evidence

¹⁸ Independent Anti-Slavery Commissioner (2020), [‘The Modern Slavery Act 2015: A call for evidence’](#).

¹⁹ Justice and Care (2021), ‘From victim, to witness, to survivor: The Modern Slavery Victim Navigator Programme – An independent analysis’.

was admissible in court, around one third of them (approximately 20) had criminal convictions.

Some of the most powerful testimony was from victims who had convictions, including from one victim who was threatened to be hung up by his testicles because he complained about the situation he was in. The victims who were able to give evidence, including those with convictions, fed back to the investigation team that they found the experience gave them some sort of closure and helped the healing process for the trauma they had suffered.

Practically, the NRM can also provide a vital mechanism for law enforcement being able to maintain contact with victims and survivors. I am aware that support workers in safehouses are often instrumental in securing victim's co-operation and engagement, reducing the likelihood of contact being lost, for example through an individual changing their phone number.

Finally, it is also feasible that plans to update offences and increase penalties for illegal entry could result in victims of trafficking who enter or arrive in the UK without a valid entry clearance being excluded from the recovery and reflection period provided by the NRM on the basis of public order grounds with possible sentences in excess of twelve months.

I remain unclear whether this clause is compatible with our obligations under Article 13 of ECAT which suggests that states are not bound to observe the period of reflection and recovery if grounds of public order prevent it, or it is found that victim status is being claimed improperly. There is no mention in Article 13 of there being no requirement to make a conclusive grounds decision in this situation. The legislation and supporting documentation suggest that if there is no period of recovery and reflection then there is no requirement to make a conclusive grounds decision. It will be important to ensure that this legislation is compatible with our ECAT obligations.

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

This clause defines that assistance and support will be provided to a potential victim of modern slavery where the Secretary of State considers that assistance and support is necessary for the purpose of assisting the person receiving it in their recovery from any harm to their physical and mental health and their social well-being arising from the conduct which resulted in their positive reasonable grounds decision. Overall, I support and welcome the commitment to provide assistance and support to potential victims of modern slavery being included within primary legislation.

I have heard many views from the sector expressing concern that this clause would limit support to an individual's specific needs that arise as a result of their trafficking experience. I understand this position and recognise the importance of addressing vulnerability in the round to prevent further exploitation and re-trafficking. The very nature of modern slavery offending in targeting the most vulnerable was highlighted in your foreword for the Government's 2020 Annual Report on modern slavery.²⁰ However, I do not agree that it is solely the responsibility of the Home Office to meet all of an individual's ongoing support needs where some of these needs are likely to have been present prior to their exploitation.

The Salvation Army 2020 Annual Report evidences how an increasing number of individuals are being referred into the NRM with complex needs: "*there is a much higher volume of 'county lines'*

²⁰ HM Government, Department of Justice Northern Ireland, The Scottish Government and Welsh Government (2020), '[2020 UK Annual Report on Modern Slavery](#)'.

cases, with the victims having high complex needs such a substance addictions and mental health issues".²¹ I appreciate 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. It is therefore essential that the Home Office works alongside other safeguarding partners, including local authority adult social care departments, to offer a partnership approach to supporting victims and survivors that aims to address vulnerability and deliver longer-term positive outcomes.

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

This clause sets out the circumstances within which the Secretary of State must give an individual limited leave to remain in the United Kingdom. Article 14 of ECAT requires states to issue a 'renewable residence permit' to victims where the competent authority considers that their stay is necessary owing to their personal situation, and/or where their stay is necessary for the purpose of their co-operation with criminal proceedings.²² In principle, I therefore welcome the commitment to define the circumstances within which the Secretary of State will grant leave to remain to confirmed victims of modern slavery with a positive conclusive grounds decision within primary legislation.

The guidance on granting discretionary leave for victims of modern slavery states that discretionary leave may be considered where the SCA has made a positive conclusive grounds decision and the individual satisfies the required criteria.²³ Despite this however, the number of survivors being granted discretionary leave remains very low. In 2015, 123 survivors with a positive conclusive grounds decision were granted discretionary leave, in 2019 it was 70 and in the first three months of 2020 it was only eight.²⁴

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.²⁵ 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. I am aware that there is much support across the sector for Lord McColl's Victim Support Bill which calls for survivors of modern slavery with a positive conclusive grounds decision to be automatically granted twelve months leave to remain. Whilst I want to see more survivors being granted discretionary leave, I maintain that this should be considered on a case-by-case basis. For this clause to be meaningful, there must be a genuine commitment to increasing the number of survivors of modern slavery granted leave to remain.

There is considerable concern within the sector regarding the absence of children throughout the Bill, and this clause in particular is felt to be at odds with Article 14.2 of ECAT. The guidance on discretionary leave for victims of modern slavery states that where the case involves a child, the best interest of the child should always be factored into any consideration regarding discretionary leave. The lack of clarity around what this clause would mean in practice for children was acknowledged in

²¹ The Salvation Army (2020), ['Year nine report on The Salvation Army's Victim Care and Co-ordination Contract: June 2019 to June 2020'](#).

²² Council of Europe Convention on Action against Trafficking in Human Beings (2005), ['Council of Europe Convention on Action against Trafficking in Human Beings: Treaty Series No. 37'](#).

²³ Home Office (2020), ['Discretionary leave considerations for victims of modern slavery'](#).

²⁴ FOI 59314.

²⁵ Independent Anti-Slavery Commissioner (2021), ['IASC Commentary: Support survivors to regain independence'](#).

the government response to the New Plan for Immigration consultation and it is disappointing that this detail was not included as part of the Bill.²⁶

Clause 54 - Civil legal aid under section 9 of LASPO: add-on services in relation to the national referral mechanism and Clause 55 - Civil legal services under section 10 of LASPO: add-on services in relation to national referral mechanism

Clause 54 relates to amending the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to enable advice on referral into the NRM to be provided as ‘add-on’ advice where individuals are in receipt of civil legal services for certain immigration and asylum matters. While the focus on legal aid is welcome, there are concerns that these provisions do not go far enough.

It is recognised that access to good quality and specialist legal advice can be vital for victims and survivors of modern slavery to assist them in being formally identified as a victim, to access support, to engage with criminal justice processes, to seek compensation and to secure their immigration status. However, there are often significant barriers for survivors to access legal aid in practice, including uncertainty around entitlements and the funding structure for immigration legal aid which can discourage lawyers from taking on modern slavery cases.²⁷

In considering legal aid provision for victims and survivors of modern slavery, I would encourage you to look carefully at how this will be delivered in practice. I am aware that outside London and the South East, victims and survivors already often experience significant difficulties in accessing legal aid lawyers.²⁸ The Anti-Trafficking and Labour Exploitation Unit (ATLEU) have helpfully developed an online referral system for support workers to simplify the process for sourcing legal aid representation and better understand the evidence base on gaps in the provision of legal advice for survivors.²⁹ It is also essential that those providing legal aid for victims and survivors understand the complexities of the NRM and the unique experiences of victims of modern slavery. Finally, I refer to a letter I sent to Alex Chalk MP last year highlighting the risk that legal aid lawyers will be deterred from taking on complex trafficking cases if the fees do not cover the work required.³⁰

Clause 55 refers to amending LASPO 2012 to enable advice on referral into the NRM to be provided as ‘add on’ advice where individuals have received an exceptional case determination under section 10 of LASPO 2012. I understand from colleagues in the sector that exceptional case funding is extremely difficult to secure in practice. It is described as time consuming and unlikely to be successful, requiring a lot of work upfront with the solicitor only paid if the application is successful.³¹

²⁶ HM Government (2021), [‘Consultation on the New Plan for Immigration: Government Response’](#).

²⁷ Currie, S. and Young, M. (2021), [‘Access to legal advice and representation for survivors of modern slavery: Research summary’](#).

²⁸ Currie, S and Bezzano, J (2021), [‘An uphill struggle: Securing legal status for victims and survivors of trafficking’](#).

²⁹ ATLEU (2020), [‘Our online system is now open for referrals’](#).

³⁰ Independent Anti-Slavery Commissioner (2020), [‘Letter to Alex Chalk MP July 2020’](#).

³¹ Currie, S. and Young, M. (2021), [‘Access to legal advice and representation for survivors of modern slavery: Research summary’](#).

Clause 56 - Disapplication of retained EU law deriving from Trafficking Directive

This Clause states that Section 4 of the European Union (Withdrawal) Act 2018 ceases to apply to rights, powers, liabilities, obligations, restrictions, remedies and procedures derived from the Trafficking Directive so far as their continued existence would otherwise be incompatible with provision made by or under this Act. I have no further feedback to provide on this clause.

Clause 57 - Part 4: interpretation

This Clause confirms the definitions for a number of terms used within the Bill. I have no further feedback to provide on this clause.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Sam Yuen', written in a cursive style.

Independent Anti-Slavery Commissioner