

## Submission to the UN Human Rights Committee

### Eighth periodic report of the United Kingdom, February 2024

#### Introduction

The Helen Bamber Foundation (HBF) is a specialist clinical and human rights charity that works with survivors of trafficking, torture and other forms of extreme human cruelty. Our multidisciplinary and clinical team provides a bespoke Model of Integrated Care for survivors which includes medico-legal documentation of physical and psychological injuries; specialist therapeutic care; a medical advisory service; a counter-trafficking programme; housing and welfare advice; legal protection advice; and community integration activities and services.

Asylum Aid, part of the Helen Bamber Foundation group, provides high quality legal representation to some of the most vulnerable people seeking asylum in the UK, including but not limited to children, survivors of trafficking, and stateless people.

This submission focuses on the United Kingdom of Great Britain and Northern Ireland (UK) government's upholding of the International Covenant on Civil and Political Rights with respect to survivors of trafficking, refugees and those seeking asylum and stateless persons, with a focus on the rights protected by Articles 2, 3, 7, 8, 9, 13, 14, 24, 25 and 26. Since the seventh periodic report of the Human Rights Committee, the UK government has introduced a range of laws and policies that serve to erode the rights of non-British nationals, expanding the 'hostile environment' approach (cutting off access to support, employment and housing) previously used to target those with uncertain immigration status to also cover those seeking protection in the UK. This has resulted in fewer victims of trafficking being identified and supported; more people held in immigration detention and caused significant harm as a result; and more people seeking asylum removed from the UK without a fair hearing of their claim, or left living in limbo fearing removal.

HBF is a member of the Anti-Trafficking Monitoring Group and also supports their submission.

#### Elimination of slavery, servitude and trafficking in persons (arts. 2, 7, 8, 24 and 26)

17. Please provide information on the new procedure to identify potential victims of trafficking, the national referral mechanism, and provide information on the two-stage approach established to identify whether a person is a victim of trafficking, including of sexual exploitation of children and modern slavery. Please comment on information received that the two-stage approach requires a standard of proof that hinders the identification of victims. Please provide information on measures taken to prosecute and punish those responsible for trafficking and to provide effective remedies to victims.

In recent years, the UK government has introduced increasingly restrictive and punitive immigration policies, with a significant negative impact on the identification and protection of victims of trafficking. These include measures in the Nationality and Borders Act 2022 (NABA) making it harder for survivors

to access the National Referral Mechanism (NRM);<sup>1</sup> the government's plans to permanently remove people seeking asylum, including victims of trafficking, to Rwanda;<sup>2</sup> and provisions in the Illegal Migration Act 2023 that would effectively block survivors of trafficking from protection and support under the asylum and trafficking systems. These changes will not discourage the demand that leads to trafficking. Instead, preventing people from accessing the very systems that might provide them with support and protection will leave them more vulnerable and at risk of exploitation or re-exploitation. Fears of being reported to the authorities – with the possibility of being detained and/or removed – makes it easier for traffickers to keep people in exploitative conditions.

### **Identifying victims of trafficking**

In January 2023, part 5 of NABA on 'Modern Slavery' came into force, and the Modern Slavery Statutory Guidance<sup>3</sup> was updated so that a potential victim bore the burden of producing a credible account of being trafficked such that "the decision maker must agree there are reasonable grounds to believe, based on objective factors, that a person is a victim of modern slavery". Due to the complexities and vulnerabilities that survivors of trafficking face, it will rarely be the case that they are in a position to provide objective information about their experiences at the time of being referred into the NRM or before a 'reasonable grounds' decision is made.<sup>4</sup>

This new higher threshold for making the first stage 'reasonable grounds' decision resulted in more victims receiving negative decisions and therefore being denied vital support under the NRM - in the first quarter of 2023 there was a drop of 30% in positive reasonable grounds decisions made.<sup>5</sup> Following a legal challenge, the statutory guidance was revised in July 2023<sup>6</sup> to allow more discretion for decision makers on the issue of evidence. However, the latest NRM statistics published for quarter 3 2023, continue to show a much lower rate of positive reasonable grounds (only 52% compared to 88% in the same quarter the previous year).<sup>7</sup>

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<sup>1</sup> The commencement of Part 5 of the Nationality and Borders Act 2022 has brought several changes to the functioning of the NRM process, including the increase of the Reasonable ground decision threshold; the reduction of the recovery period from 45 days to 30; mechanisms to disqualify people from support, changes to the timeframe for evidence gathering at Conclusive ground decision stage and a narrowing of the criteria for granting limited leave to remain.

<sup>2</sup> [Human trafficking survivors could be sent to Rwanda, new guidance says | ITV News](#)

<sup>3</sup> Home Office, [Modern Slavery: statutory guidance](#), January 2024

<sup>4</sup> There are many reasons why a potential victim may not be able to obtain objective information or evidence. These include:

- The nature of trafficking is of isolation and control
- Barriers to disclosure, including shame around what they have experienced and fear of reprisals
- A lack of interpreters and legal representation for victims of trafficking
- Survivors of trafficking may be unaware that they are the victims of modern slavery or trafficking and so do not come forward with their experiences until it identified by first responders or other support organisations.
- The significant amount of time and complex planning it takes to produce expert evidence, such as a medico-legal report or a letter of support from our therapy or counter-trafficking team. HBF's timeframe for providing a medico-legal report is around five months, as set out in the [Home Office policy on medical evidence](#).
- There is considerable delay in the sharing of information between relevant authorities and organisations. For example, obtaining the GP records for a survivor can take up to a month, and sometimes longer, because surgeries are now inundated with requests for such records.

<sup>5</sup> Home Office, [Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 1 2023 – January to March](#)

<sup>6</sup> Matrix Chambers, [SSHD withdraws new evidential test for 'Reasonable Grounds' decisions in Modern Slavery Statutory Guidance](#), June 2023

<sup>7</sup> Home Office, [National Referral Mechanism statistics](#)

In December 2023 the long-promised ‘Places of Safety’ scheme which would allow survivors to access basic advice, a roof over their heads, and medical intervention in the days after leaving exploitation when they might otherwise be destitute, at risk of reprisals from traffickers or driven back into exploitation was abandoned. Without this scheme the opportunities to identify and support survivors are likely to be missed, leaving many without the chance to process what they have experienced and make an informed decision about whether accessing support or working with the authorities is right for them.<sup>8</sup>

### ***Protection – support and safe accommodation***

Support for survivors of trafficking should be long-term and tailored to each individual in order to meet needs which have arisen both from their experience of exploitation, and subsequent or preceding needs which make them vulnerable to re-trafficking.

However, the low rates of financial support provided by the UK government to victims of trafficking can cause them considerable distress and significantly worsen their physical and mental health problems.<sup>9</sup> Those who are successfully referred into the National Referral Mechanism and/or asylum systems receive subsistence payments, but these can be extremely low – people in the asylum system are forced to live on just £7.03 per day, or £1.27 a day if accommodated in full-board hotels.<sup>10</sup> While enduring long delays in the asylum and NRM systems (waiting for months or years for decisions), survivors remain in a situation of poverty, dependency and low socio-economic status. The prolonged inability to work, to provide for themselves or their family, or to start to move on with their lives means that survivors are more likely to be targeted for exploitation, take up work in exploitative conditions and/or get into debt.

Once a person receives a positive ‘conclusive grounds’ decision their financial needs will be assessed under the Recovery Needs Assessment (RNA) process, although decisions on this are still made by the Single Competent Authority rather than an authority with specialist experience in recovery needs. Research on this process found that financial support was the first strand of support to be stopped, placing survivors at a heightened risk of destitution and re-trafficking.<sup>11</sup> Often a rigid approach is taken as to what would assist with a person's recovery, with requests being regularly granted for shorter periods than requested or refused because they were not considered to be related to ‘a need arising out of a person's trafficking experience’. Often these assessments were not taken in a trauma informed way and no criteria or training is given on how to determine how a need arises from a trafficking experience. This approach shows a failure to comprehend that support under the NRM and RNA is to aid recovery, and not simply to provide daily essentials.

In December 2023, the UK government announced that it was abandoning the commitment it had made that all those who receive a positive ‘conclusive grounds’ (CG) decision, and are in need of tailored support, would receive this support for a minimum of 12 months. It argued that “the existing needs-based approach already ensures that necessary assistance to victims with a positive CG decision is available”, despite recent research demonstrating that this is clearly not the case.<sup>12</sup>

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<sup>8</sup> [NGO letter to Prime Minister Rishi Sunak](#), 8th December 2023

<sup>9</sup> Helen Bamber Foundation, [Submission to Home Office review of asylum support rates](#), August 2022

<sup>10</sup> Home Office, [Asylum support: What you'll get](#)

<sup>11</sup> Anti-Trafficking Monitoring Group, [One day at a time: the Recovery Needs Assessment \(RNA\)](#)

<sup>12</sup> Helen Bamber Foundation, [Broken Promises: Home Office actions leave survivors of trafficking in fear of their safety and future in the UK](#)

Potential victims of trafficking referred into the NRM may have access to temporary accommodation,<sup>13</sup> but there are not enough 'safe houses' to meet the need. It is extremely difficult to secure an appropriate safe house place and many victims are instead housed in 'contingency' asylum accommodation, including hotels, for prolonged periods. More than 50,000 people seeking asylum are stuck in hotel accommodation,<sup>14</sup> which is damaging to their health and well-being, often causing worsening depression and increasing suicidal ideation.<sup>15</sup> HBF has worked with a number of people housed in former military barracks, including survivors of trafficking, and this form of 'quasi-detention' has been widely condemned as 'prison-like' and highly re-traumatising for survivors of torture, trafficking or other serious forms of violence.<sup>16</sup>

Inappropriate accommodation increases the risk of (re)exploitation - recent research found evidence of visible, large-scale accommodation in hostels, hotels and houses of multiple occupancy being targeted by traffickers.<sup>17</sup> There is a lack of welfare and vulnerability assessments involved in the allocation of accommodation for people vulnerable to exploitation.

### ***Protection – secure status***

Many survivors of trafficking are forced to spend years in limbo, waiting for NRM and asylum decisions including reconsideration outcomes, appeals and judicial reviews. 67% of HBF clients have been waiting for over two years for their initial asylum decisions. The situation is worse for survivors of trafficking who are in both the asylum and NRM systems, as it has been shown that asylum decisions for those with a NRM referral are seven times more likely to take longer than 12 months than asylum decisions without a NRM referral.<sup>18</sup>

At the end of September 2023, there were 125,173 asylum cases (relating to 165,411 people) awaiting an initial decision, over five times more than the number of applications awaiting an initial decision in 2018.<sup>19</sup> Final (conclusive grounds) NRM decisions are currently taking an average of 17 months.<sup>20</sup>

Even when they are conclusively recognised as a victim of trafficking in the NRM, survivors must wait for further decisions as to whether they should be granted leave to remain and whether their existing support should continue. While the Home Office is able to grant them 'temporary permission to stay', this is rarely done. In 2020 to 2021, over 1,750 adults subject to immigration control were confirmed as victims of trafficking<sup>21</sup> but just 150 adults were granted 'leave to remain' as a result – less than one

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<sup>13</sup> Under the [Modern Slavery Victim Care Contract](#)

<sup>14</sup> [Where are asylum seekers being housed in hotels in the UK? - BBC News](#)

<sup>15</sup> Refugee Council, [Lives on hold](#), July 2022

<sup>16</sup> Helen Bamber Foundation and Humans for Rights Network, [Ghettoised and traumatised: the experiences of men held in quasi-detention in Wethersfield](#), December 2023. All Party Parliamentary Group on Immigration Detention, [Inquiry into quasi-detention - full report](#), December 2021

<sup>17</sup> British Red Cross and UNHCR, [At risk: exploitation and the UK asylum system](#)

<sup>18</sup> Independent Anti-Slavery Commissioner paper, [Asylum decision times for potential victims of modern slavery](#), October 2021

<sup>19</sup> Home Office [How many people do we grant protection to?](#)

<sup>20</sup> Home Office, [Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2022](#)

<sup>21</sup> Conclusive grounds (CG) decision data is not broken down by nationality. However, 2,666 positive CG decisions were made in 2020 and 2021 and 2/3 of referrals into the NRM were foreign nationals so we estimate at least 1,750 of those decisions related to foreign nationals. See Home Office, [National Referral Mechanism Statistics Quarter 3 2022](#)

in ten.<sup>22</sup> In the first half of 2023, following the narrowing of the criteria for grants,<sup>23</sup> this number was even lower, with fewer than 40 grants of leave.<sup>24</sup> In many instances where leave is granted, this is often the result of extensive evidence being submitted several months after the positive conclusive grounds decision is made and is often only for 12 months or less with no route to settlement. A lack of a secure immigration status results in not only ongoing instability and fear of forced return, as well as poverty, destitution and isolation as it prevents survivors from working, accessing services and being able to rebuild their lives. This in turn increases their vulnerability to abuse, exploitation and re-trafficking.

Under the Illegal Migration Act 2023 this situation will be significantly worse. 93% of HBF clients who are survivors of trafficking have made both asylum applications and been referred to the National Referral Mechanism but under this Act the vast majority of those arriving outside the very limited existing 'safe routes' will be blocked from claiming asylum. With no returns agreements in place and no-where to remove them, survivors will either be held indefinitely in the already overstretched and problematic immigration detention estate or left to languish in Home Office-run accommodation.

The Act will also remove specific protections for survivors of trafficking and modern slavery, a response to false and wildly misleading claims from the government that the National Referral Mechanism is 'being abused'.<sup>25</sup> Survivors of trafficking will of course continue to come to the UK by irregular routes because a core aspect of human trafficking is the movement of people and the use of threat, force or fraud and the abuse of vulnerability to do so. Others will continue to travel to seek safety and may be trafficked during, or following, their journey. Preventing them from accessing support plays straight into the hands of traffickers, who will use fear and isolation to keep people trapped in exploitation and exploit others.

There is now also a risk that survivors of trafficking could be removed to Rwanda, in contravention of the UK's international obligations, under the Rwanda removals scheme (covered in more detail below). The UN Special Rapporteur on trafficking in persons, especially women and children, highlighted concerns that the UK's Memorandum of Understanding (MoU) with Rwanda may breach the UK's positive obligations to victims of trafficking and contemporary forms of slavery, including the duty to investigate without delay and take operational measures to protect potential victims, where there are sufficient indicators available of circumstances which give rise to a credible suspicion of a real risk of trafficking or exploitation.<sup>26</sup> The UK has ratified a new Treaty with the Rwanda government,<sup>27</sup> but this does not address concerns raised about the MoU. In fact, Article 13(2) of the Treaty specifically envisages Rwanda receiving individuals for whom the UK has made a positive reasonable grounds decision that they are a 'potential' victim of trafficking, before the UK has made a conclusive grounds decision under the National Referral Mechanism.

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<sup>22</sup> Freedom of Information Request reference: 71848, answered by the Home Office on 5<sup>th</sup> December 2022

<sup>23</sup> The January 2023 change to the guidance adds a further hurdle before a person can be granted leave by requiring them to specifically prove that they need to remain in the UK to assist their recovery, further increasing the evidential burden. See Home Office, [Temporary permission to stay for victims of human trafficking and slavery: caseworker guidance](#), January 2023

<sup>24</sup> Freedom of Information Request reference: 2023/04852, answered 21/11/23

<sup>25</sup> UN News, [UN rights experts condemn attacks in UK on trafficking victims' credibility](#), December 2022

<sup>26</sup> 9 OL GBR (9.2022)\_1 (ohchr.org)

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27407>

<sup>27</sup> Home Office, [UK-Rwanda treaty: provision of an asylum partnership](#)

The UK government should ensure that victims of trafficking are provided with assistance and protection. Article 13 of the Treaty states that Rwanda will have ‘regard’ to information about the special needs of victims of modern slavery or human trafficking, and take ‘all necessary steps to ensure that these needs are accommodated’. But this must be examined in combination with concerns already raised about the risks of trafficking and re-trafficking in Rwanda. Citing the 2021 US State Department Trafficking in Person Report (TIPP), the previous Independent Anti-Slavery Commissioner raised concerns that Rwanda has detained thousands of potential trafficking victims without conducting adequate screening or referring identified victims to proper care and assistance; that in 2021 Rwanda investigated fewer trafficking cases and prosecuted and convicted fewer traffickers compared to the previous year; and that it “lacked a victim-witness support program”.<sup>28</sup> The 2023 Trafficking in Persons Report highlighted that the Rwandan government still “did not meet the minimum standards in several key areas”. The government “continued to lack specialized Standard Operating Procedures (SOPs) to adequately screen for trafficking among vulnerable populations and did not refer any victims to services”.<sup>29</sup>

The UK-Rwanda Treaty, and the Safety of Rwanda Bill currently going through parliament, risk depriving victims of trafficking of their rights to recovery and exposing them to the risk of further exploitation, in clear violation of the UK’s international obligations.

**Suggested questions for the UK government:**

- **Given evidence indicating that new legislation is adversely impacting survivor’s access to the NRM, how will the government ensure that survivors of modern slavery are not excluded from identification and assistance?**
- **What steps is the UK government taking to ensure that victims of trafficking in the UK have sufficient support and secure status in the UK so that they are not at risk of further exploitation or re-trafficking?**

**Treatment of aliens, including migrants, refugees and asylum seekers (arts. 2, 9, 10, 13, 14 and 26)**

*18. In light of the Committee’s previous concluding observations (para. 19), please comment on information received indicating the difficulties encountered in the system of deportations with assurances, including that the procedure is lengthy, costly and has had mixed results. In this regard, please provide information on: (a) how the State party ensures appropriate, effective and independent post-transfer monitoring of individuals who are transferred pursuant to assurance agreements; (b) measures taken when the State party is not in a position to monitor the treatment of the individual after extradition, expulsion or return to other countries; and (c) actions taken when assurances are not satisfied in practice. Please also provide information on what plans are in place to ensure guarantees for those seeking international protection, including what measures will be adopted to replace the Dublin transfer scheme after Brexit.*

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<sup>28</sup> [UK’s slavery tsar slams ‘lack of humanity’ in Rwanda asylum deal | The Independent](#)

<sup>29</sup> US Department of State, [2023 Trafficking in Persons Report: Rwanda](#)

## Removal

The UK government has stated in its report to the Committee that “Returns are only undertaken when the UK government and courts deem it is safe to do so. Those returned are, by definition, foreign nationals who have been found as a matter of law not to need the UK’s protection, and who have no legal basis of stay in the UK.”<sup>30</sup> However, it is pursuing the following measures that would clearly allow for people who do need the UK’s protection being removed from the UK, in contravention of its legal obligations:

- The Illegal Migration Act 2023, which UNHCR has described as an ‘asylum ban’,<sup>31</sup> denying access to the UK asylum system to those who arrive irregularly. Rather than being provided with protection, those seeking asylum would instead be subject to detention in the UK, while arrangements are pursued to remove them to another country;
- The Rwanda removals scheme; and
- The determination that certain countries are automatically safe and that nationals of those countries can be returned without a fair hearing of their asylum claim.

On 14 April 2022, the UK government announced that it was going to send certain people seeking asylum in the UK to the Republic of Rwanda, where the Rwandan government would decide their asylum claims. If their claims were successful, they would be granted asylum in Rwanda, not the UK. This was supposedly to act as a ‘deterrent’ to people coming to the UK by crossing the English Channel in small boats, despite there being no evidence to demonstrate that it would be successful.<sup>32</sup> On 15 November 2023, the UK’s Supreme Court declared the policy unlawful because Rwanda was not a safe country for asylum seekers to be removed to. However, in response the government published a new treaty with Rwanda and introduced a new draft bill, which declares that Rwanda is a safe country for asylum seekers.<sup>33</sup>

The government’s claim that Rwanda should be treated as a safe country has always depended on the assurances given by Rwanda as to how people seeking asylum will be treated in that country, and on the monitoring arrangements that are in place to ensure that those assurances are adhered to. The Supreme Court found in November 2023 that those assurances were not a sufficient safeguard and that the monitoring arrangements were inadequate<sup>34</sup> to remove the real risk that people sent to Rwanda would be *refouled* to countries where they are at risk of persecution in breach of international law. The UK government claims that the changes in the monitoring mechanisms in the Rwanda Treaty overcome these concerns; however the UK Parliament’s House of Lords International Agreements Committee has held that there are significant further practical and legal steps which need to be taken

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<sup>30</sup> [UK response to the UN’s Human Rights Committee’s list of issues](#)

<sup>31</sup> UNHCR UK, [Explainer - Why the UK Illegal Migration Bill is an Asylum Ban](#)

<sup>32</sup> The Migration Observatory, [Q&A: The UK’s policy to send asylum seekers to Rwanda](#)

<sup>33</sup> [R \(on the application of AAA and others\) v Secretary of State for the Home Department](#), [2023] UKSC 42

<sup>34</sup> *Ibid*, para 93. The Court observed that “ Such arrangements may be capable of detecting failures in the asylum system, and over time may result in the introduction of improvements, but that will come too late to eliminate the risk of refoulement currently faced by asylum seekers removed to Rwanda.”

to establish the arrangements provided for in the Treaty, and that the changes would also need time to bed in.<sup>35</sup>

The Safety of Rwanda Bill seeks to deem Rwanda to be a safe country and require all decision makers to treat it as such. It is questionable what role monitoring arrangements will play if this Bill is enacted and what steps the UK government will be able to take if the assurances in the Treaty are inadequate or are not complied with.

It is difficult for the government to bring into force the Illegal Migration Act 2023 ‘duty to remove’<sup>36</sup> while there is nowhere to send those who arrive here. Instead, the government seems to be using the ‘safe’ country list to remove people – there are significant concerns that this ‘safe’ country list will be expanded further in future and people blocked from the asylum system that way. Section 80A of the Nationality, Immigration and Asylum Act 2002 currently states that any asylum claims made by EU nationals will be deemed ‘inadmissible’ unless there are exceptional circumstances. The Illegal Migration Act 2023 will introduce a broader list of ‘safe’ countries of origin<sup>37</sup> beyond EU states, and when fully enacted, if a national of one of the countries on the list claims asylum and/or makes a human rights claim, that claim will be deemed inadmissible. They can then be returned to their own country unless the Home Secretary considers there are “exceptional circumstances” which mean the claim should be considered.

The list of ‘safe countries’ includes Albania, despite close to half (49%) of all Albanian nationals seeking international protection being granted asylum in 2022 with the grant rate being at an even higher 87% for Albanian women and children.<sup>38</sup> Furthermore, Albanians made up the most common nationality among small boat arrivals that were referred to the NRM in 2022, accounting for 55% of this group.<sup>39</sup> By the end of 2022, the Home Office already made a positive decision in 90% of Albanians claims who arrived on a small boat and received a reasonable grounds decision.<sup>40</sup> Research on the situation of trafficked men and boys from Albania further highlighted risk factors including poverty, low education, suffering from physical or mental disabilities, domestic violence and/or sexual abuse within the family or a pre-existing blood feud, being LGBT and for children, being Roma or Egyptian or homeless.<sup>41</sup>

Furthermore, the government recently laid regulations which will add India and Georgia to the list of ‘safe’ countries at section 80AA of the Nationality, Immigration and Asylum Act 2002.<sup>42</sup> This is

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<sup>35</sup> House of Lords International Agreements Committee, [Scrutiny of international agreements: UK–Rwanda Agreement on an Asylum Partnership](#), January 2024

<sup>36</sup> Clause 2, [Illegal Migration Act 2023](#)

<sup>37</sup> The section 80AA list of ‘safe’ countries was introduced by section 59 of the Illegal Migration Act 2023 and was brought partly into force on 28 September 2023, for the purpose of making regulations.

<sup>38</sup> Home Office, [How many people do we grant protection to?](#), 23 February 2023

<sup>39</sup> Home Office, [Irregular migration to the UK, year ending December 2022](#), 23 February 2023

<sup>40</sup> *ibid*

<sup>41</sup> See Asylos, [Albania: Trafficked boys and young men](#), May 2019 and David Neale, Garden Court Chambers, [Albanian trafficked boys and young men: an addendum review of the February 2023 CPIN](#)

<sup>42</sup> The Nationality, Immigration and Asylum Act 2002 (Amendment to List of Safe States) Regulations 2024

despite the fact that the UK recognises nationals from both India and Georgia as refugees.<sup>43</sup> This change is likely to result in people being returned by the UK government to persecution.

#### **Suggested questions for the UK government:**

- **Will the Home Office commit to its domestic and international obligations by processing all asylum claims in the UK, irrespective of the individual's means of arrival, and ensuring access to identification and assistance through the NRM for survivors of modern slavery?**
- **How does the UK government intend to respond to any findings by the Monitoring Committee under the Rwanda Treaty, or other evidence, which indicate that Rwanda is not safe? What arrangements are in place to monitor the safety of the countries of origin added to the list under s80AA, and what steps will be taken to ensure that no-one is removed to such a country in breach of the UK's international obligations?**

21. *With reference to the Committee's previous concluding observations (para. 21), please provide information on the maximum time limit on immigration detention, on the average period immigrants stay in detention facilities and on available procedural guarantees to challenge immigration detention. Please also comment on information received by the Committee about the practice of detaining parents of young children without making proper arrangements for the children. Please comment on the implementation of the Adults at Risk in Immigration Detention Policy and provide information on the impact of the policy. Please also provide information on the use of alternatives to detention with regard to migrants at risk of detention and comment on the pilot project "Action Access", established in 2018 for two years for the purpose of supporting women.*

#### **Immigration detention**

In its report to the Committee, the UK government has asserted that "In order for detention to be lawful, there must be a realistic prospect of removal within a reasonable timescale. Once a person is in detention, regular reviews are undertaken to ensure their detention remains lawful, appropriate and proportionate". However, the Home Office routinely detains people who are subject to immigration control only to release them again back into the community, causing them significant harm in the process – in the year ending March 2023 only 21% of detainees were returned overseas from immigration detention.<sup>44</sup>

The Illegal Migration Act 2023 dramatically increases the government's powers to detain people. Under section 12 of the Act, the principle that it is for the courts to decide what is a 'reasonable' period of detention is transferred to the Home Secretary, removing much needed judicial oversight. Even if release is deemed appropriate, a person can be detained for as long as the Secretary of State deems reasonably necessary while arrangements for release are made. Other provisions, that are not yet in force, will prevent a person from applying to the Tribunal for bail in their first 28 days of detention, likely increasing the length of time that people are held for.

Those detained for immigration purposes includes survivors of trafficking and slavery. Survivors are detained either after imprisonment, with many having been wrongly convicted for offences they were

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<sup>43</sup> Immigration Law Practitioners Association and Rainbow Migration, [Joint Briefing on Draft Nationality, Immigration and Asylum Act 2002 \(Amendment of List of Safe States; proposal to add India and Georgia\) Regulations 2024](#)

<sup>44</sup> Home Office, [How many people are detained or returned?](#)

forced to commit by their traffickers, and/or because they do not have permission to remain in the UK and have not received the support necessary to enable them to disclose that they have been trafficked. For example, many survivors of trafficking are detained for removal after being picked up during raids on brothels, nail bars and cannabis farms.

Research has already shown that immigration detention results in deteriorating mental health and reduced recovery;<sup>45</sup> and numerous government-commissioned or parliamentary reports and inquiries have already highlighted that the Home Office is failing to identify vulnerable people, or even to release people from detention once identified as vulnerable or trafficked.<sup>46</sup> Yet, instead of taking urgent steps to address these existing problems, the government has introduced changes to law and policy that have worsened the situation. While previous Home Office policy stated that victims of trafficking (among other vulnerable groups) were only suitable for detention in exceptional circumstances, in 2021 survivors of trafficking were brought entirely under the scope of the controversial 'Adults at Risk' (AAR) policy,<sup>47</sup> despite the government recognising that this would result in more survivors of trafficking being detained.<sup>48</sup> The AAR policy requires a detainee to provide 'scientific levels of evidence'<sup>49</sup> that they are likely to suffer harm in detention before they might be released. In addition, their immigration and criminal offending history, which could be linked to their trafficking experience, is more likely to be weighed up in favour of their continued detention rather than understood in the context of the exploitation they have suffered.

There has been a clear rise in the number of people referred to the UK's identification mechanism for victims of trafficking and modern slavery (the National Referral Mechanism, or NRM) from detention – data published by the government and shared via a Freedom of Information request shows that the number of referrals increased from around 500 in 2018 to over 1,600 in 2021,<sup>50</sup> and then nearly *doubled* to 3,063 in 2022 after victims of trafficking were included in the AAR policy. In 2022, over 90% of people referred to the NRM from detention were confirmed to be victims of trafficking.<sup>51</sup>

Despite the increase in referrals to the NRM from detention, the system was flawed to such an extent that many survivors are not being identified, even when clear indicators or disclosures are made. This serious issue regarding the identification of survivors of modern slavery and human trafficking was detailed further in the recent Independent Chief Inspector of Borders and Immigration's (ICIBI) third annual inspection of the Adults at Risk policy.<sup>52</sup> The ICIBI emphasised that the Home Office's perception of detainees abusing the safeguarding mechanism to secure release from detention was unfounded and un evidenced. Instead, inspectors found serious concerns in the operation of existing

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<sup>45</sup> von Werthern, M., Robjant, K., Chui, Z. et al. [The impact of immigration detention on mental health: a systematic review](#). BMC Psychiatry 18, 382 (2018)

<sup>46</sup> See, for example, the Independent Chief Inspector of Borders and Immigration, [Third annual inspection of Adults at Risk Immigration Detention June to September 2022](#)

<sup>47</sup> Home Office, [Adults at risk in immigration detention](#)

<sup>48</sup> The Independent, [Home Office admits new immigration plans may see more trafficking victims locked up](#)

<sup>49</sup> Joint Committee on Human Rights, Immigration detention Sixteenth Report of Session 2017–19, February 2019

<sup>50</sup> Freedom of Information (FOI) response 69730. The request asked for the number of people detained under immigration powers in prisons, Immigration Removal Centres, pre-departure accommodation or short-term holding facilities who were referred into the NRM between 1 January 2018 and 31 December 2021 and the outcomes.

<sup>51</sup> At the end of 2021 a new decision-making body, the Immigration Enforcement Competent Authority, was introduced to make decisions on NRM referrals from detention and statistics for 2022 show that the IECA made positive reasonable grounds decisions in 95% of cases, and positive conclusive grounds (final stage) decisions in 97% of cases. See Helen Bamber Foundation and others, [Abuse by the system: Survivors of trafficking in immigration detention](#), October 2022

<sup>52</sup> Independent Chief Inspector of Borders and Immigration, [Third annual inspection of Adults at Risk Immigration Detention June to September 2022](#)

safeguards. Despite the Home Office accepting or partially accepting all 10 of the ICIBI's recommendations<sup>53</sup> the situation in immigration detention has only worsened.

Most recently, The Brook House Inquiry<sup>54</sup> exposed a wholesale failure of safeguards and a culture of dehumanisation<sup>55</sup> in the system that led to 19 instances of inhuman or degrading treatment of people who were detained at Brook House Immigration Removal Centre. The inquiry found inadequate healthcare provision, clinical safeguarding failures, and other mistreatment increased the risk of re-traumatisation and negative long-term health outcomes in immigration detention.

**Suggested questions for the UK government:**

- **What steps is the government taking to implement recommendations made by the Brook House Inquiry, the Independent Chief Inspector of Borders and Immigration and NGOs working in immigration detention?**
- **Will the government commit to ensuring that vulnerable individuals are considered suitable for detention only "in very exceptional circumstances"?**

19. *Please provide information on the statelessness determination procedure and inform if applicants have access to legal aid, if the procedure allows for an effective appeal mechanism and how staff members are trained on the statelessness procedures. Please comment on information received that the standard of proof in statelessness determination procedure are very high and applicants lack assistance in evidencing their claims. Please also comment on reports on the use of administrative detention for individuals claiming statelessness.*

**Statelessness**

Under its international obligations, the UK should ensure that stateless persons have the same rights and entitlements as favourable as possible and, in any event, not less favourable than those accorded to non-British nationals generally in the same circumstances. Identifying stateless persons is the first step in providing them with adequate protection and rights in line with international law.

In April 2013, the UK introduced a procedure, outlined in the Immigration Rules and Home Office guidance<sup>56</sup>, through which individuals may be granted a residence permit ('leave to remain') in the UK on the grounds of statelessness. However, there significant gaps in law, policy and practice that result in the failure to respect, protect and fulfil the rights of all stateless persons and every child's right to acquire a nationality.

For example, the form for someone who is stateless to apply for leave to remain is online, lengthy, only available in English, and unclear and repetitive in parts. The burden of proof is on the applicant, but decision-makers are obliged by government guidance to carry out research and enquiries,

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<sup>53</sup> [Home Office response to the third ICIBI inspection of adults at risk in immigration detention](#)

<sup>54</sup> [Brook House Inquiry](#)

<sup>55</sup> Medical Justice, [Brook House Public Inquiry report published](#)

<sup>56</sup> Home Office, Immigration Rules, published on 25 February 2016 and updated on 4 January 2022, at Part 14: Stateless Person <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-14-stateless-persons>, paras 401-416 UK Visas and Immigration, 'Stateless Leave' v 3.0 published 30 Oct 2019: <https://www.gov.uk/government/publications/stateless-guidance>.

particularly where the applicant is 'unable' to do so and where the information available is lacking or inconclusive. However, some decision-makers are reluctant to do this.<sup>57</sup>

The UK's failure to recognise statelessness as a protection issue also means that for statelessness applications, there is neither a statutory right of appeal to an independent tribunal, nor free legal assistance in England and Wales (unless 'exceptional case funding' is granted). Both of these safeguards are available in the asylum and complementary protection context. The limited remedies available after a statelessness application is refused are inadequate: internal administrative review may be subject to the same flaws as initial decision-making and judicial review is limited in the scope of its review of the facts.

The absence of legal aid and appeal rights is compounded by a low success rate and substantial delays in decision-making, particularly given that people who are stateless persons usually do not have permission to work. The UK government does not publish data on the decision in statelessness applications, but data gathered through Freedom of Information Requests showed that between 1 January 2018 and 30 September 2021 total of 3,244 applications were made; but only 232 people (7%) were granted a residence permit and 2,949 people were refused.<sup>58</sup> There is no timeframe for decisions set in law, and decisions can take months.

Recent changes to the Immigration Rules on family reunification for stateless persons will also significantly diminish the rights of stateless persons in the UK. Under the current system, family members of stateless persons can be granted leave to enter or remain in the UK alongside the stateless person, whether or not they are themselves also stateless. Following the changes, this will no longer be the case. Instead, family members will be required to apply under what is called 'Appendix FM', which is the general set of rules for family members applying to join those already living legitimately in the UK. This change shows a lack of consideration for the particular situation of stateless persons, who by definition have no other nationality and have been unable to secure the right of admission to another country – and so cannot in practice enjoy their family life in any other country.

One implication of the changes is that dependents of stateless persons will have to pay the standard fees for immigration applications, and the Immigration Health Surcharge (IHS). Family members of stateless persons were previously exempt from all such charges. An application will be prohibitively expensive for a significant number of family members of Stateless Persons: a total of £4,643 in fees per person every 30 months. While fee waivers are available, the bar for these to be granted is extremely high and it may take weeks or even months to obtain a decision.

In addition to the fees and costs, the new system will ordinarily require family members of stateless persons, if not stateless themselves, to meet other criteria that do not currently apply, including suitability, English language and financial requirements. For partners, the financial requirements would include the minimum income threshold, which will also be significantly increased following recent announcements. In combination, these changes introduce criteria for acceptance of an

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<sup>57</sup> [UNHCR, Statelessness Determination in the UK](#). The burden of proof is on the applicant, but decision-makers are obliged by government guidance to carry out research and enquiries, particularly where the applicant is 'unable' to do so and where the information available is lacking or inconclusive.

<sup>58</sup> Responses by UK government Home Office to Freedom of Information request submitted by Asylum Aid, FOI 66979, 10 February 2022

application that are far more stringent than those currently in place. There is also no provision in the Immigration Rules for children to apply as family members of stateless parents, unless one of their parents is also applying under Appendix FM. This is a significant omission for children who are not themselves stateless, or who cannot evidence their statelessness, but whose parent or parents is entitled to permission to stay on grounds of statelessness.

A new aspect of the rules also requires a stateless person to 'establish their identity' before their application for leave to remain can be considered. This reduces the protection available to stateless people, particularly given that the only appeal route on this aspect of the rules is via Judicial Review, and given that stateless people are very likely to have no personal identity documentation.

Under the previous system, a partner of a stateless person who successfully applied to join them would be granted permission to stay for five years, in line with the stateless person, following which they could apply for indefinite permission to stay. Under the new system, a successful applicant would normally be granted permission for 30 months, after which they would need to reapply (with associated costs), before being eligible for indefinite permission to stay after five years (if they meet all the financial, accommodation, English language and immigration status requirements of the Rules).

If a family member does not meet the standard criteria, they may still be granted permission if there are "exceptional circumstances", such as that refusal would breach the person's rights under Article 8 of the European Convention on Human Rights (the right to respect for private and family life). In practice, the vast majority of family members of stateless persons are unlikely to meet the new criteria, by the nature of being in such a position, and would, therefore, need to rely on exceptional circumstances. If an applicant is accepted based on exceptional circumstances, they would be able to settle only after a 10-year qualifying period, with associated costs for reapplications every 30 months in the meantime.

#### **Suggested question for the UK government:**

- **What is the justification for the change in the Rules for family members of stateless persons, given the specific situation of people recognised as stateless who are unable to secure a right of residence in any other country?**

#### **Access to justice, independence of the judiciary, and fair trials (arts. 2 and 14)**

22. *In light of the Committee's previous concluding observations (para. 22), please provide information on measures taken to improve access to the legal aid system and indicate if the State party intends to reform the Legal Aid, Sentencing and Punishment of Offenders Act 2012. In particular, please comment on information received that the application process for the exceptional case funding is onerous and complex and that the changes to the financial eligibility criteria for legal aid create obstacles for many individuals applying for the legal aid scheme.*

#### **Legal aid**

When the Legal Aid, Sentencing and Punishment of Offenders Act 2012 was introduced, it removed state-funded legal advice and representation for immigration cases, leaving people reliant on Exceptional Case Funding instead. Asylum remained 'in scope' of legal aid. However, over the past decade not only has the very low funds paid for this work and the failure to increase the rates over the

past two decades has resulted in the decimation of the legal aid sector. Recent research showed that 90% of support workers helping survivors of trafficking struggled to find legal advisors for their clients in the past year, with almost half reporting delays of six months or longer.<sup>59</sup> Half of asylum applicants are unable to access legal aid representation.<sup>60</sup> The crisis in legal aid leaves survivors without access to lawyers equipped to work on their cases, undermining their access to justice. Others may resort to paying private lawyers and may get into high levels of debt for services which are often sub-standard due to the lack of regulation in the private sector.

Since LASPO's introduction, which removed a number of areas of law from the scope of legal aid, half of all law centres and not-for-profit legal advice services in England and Wales have closed, according to government figures. In 2013-14 there were 94 local areas with law centres or agencies offering free legal services. By 2019-20, the number had halved to just 47.<sup>61</sup> Furthermore, many survivors' case are uniquely complex, long-running and costly, and as such are ill-suited to payment by standard legal aid fixed fees which do not change to reflect the time taken or level of work carried out. It means that taking on complex cases, such as those involving victims of trafficking and torture, is not viable or sustainable for many legal aid providers.

In HBF's experience, positive immigration/asylum decisions are often dependent on the quality and knowledge of legal representatives and services who advocate for survivors. Survivors of torture and trafficking require individual support throughout these arduous procedural systems, and assistance with providing the requisite evidence to substantiate their case, including medical evidence.<sup>62</sup> It is vital that legal aid rates should be urgently increased in line with inflation, and all cases should be paid at an hourly rate so that legal aid is sustainable and providers can afford to continue this vital work. Areas that were removed from scope following the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (particularly family reunion, applications based on Article 8) should be brought back into scope and provision for advice on trafficking cases including pre-NRM should be made available to all.

**Suggested question for the UK government:**

- **What steps is the government taking to address the urgent legal aid crisis in England and the lack of availability of legal aid providers?**

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<sup>59</sup> ATLEU, '[It has destroyed me](#)'. [New report by ATLEU reveals how a legal advice system on the brink is failing survivors of modern slavery](#)

<sup>60</sup> Jo Wilding, [New Freedom of Information data indicates half of asylum applicants are unable to access legal aid representation - Refugee Law Initiative Blog](#), November 2022

<sup>61</sup> The Guardian, [Legal advice centres in England and Wales halved since 2013-14](#), 15 July 2019

<sup>62</sup> HBF provides expert, court standard medico-legal documentation for clients involved in legal procedures. However, we also advocate for recognition that the majority of victims of trafficking have no access to such evidence or any medical documentation, and struggle in many cases to obtain access to appropriate healthcare services.