



Immigration Plan Consultation

About the Anti-Trafficking Monitoring Group

The Anti-Trafficking Monitoring Group (ATMG)¹ was founded in May 2009 to monitor the United Kingdom's implementation of the Council of Europe Convention on Action against Trafficking in Human Beings (2005), which came into effect in the UK on 1 April 2009. Following the UK's decision to opt into the EU Directive on preventing and combating trafficking in human beings (2011/36), which entered into force on 5 April 2013, the ATMG also monitors the obligations set out in this framework. Since its foundation in 2009, the ATMG has published annual assessments of the UK's efforts to combat trafficking in human beings, as required by international law.

ATMG is responding to the following questions:

Q1. Foreword:

Not very effective

ATMG has concerns about the language used and unsubstantiated claims made in the foreword of the Home Office's New Plan for Immigration. The foreword condemns people entering the UK through what is described as a safe third country to claim asylum. It asserts that this is an unfair and illegal route to asylum. This shows a lack of understanding as to the realities for people who are seeking safety

¹ The seventeen organisations belonging to the ATMG are: Anti-Slavery International, Ashiana, Bawso., Eastern European Resource Centre, ECPAT UK, Flourish NI, Focus on Labour Exploitation (FLEX), Helen Bamber Foundation, Hope for Justice, JustRight Scotland, Kalayaan, Law Centre (NI), Scottish Refugee Council, The Children's Law Centre, The Snowdrop Project, TARA (Trafficking Awareness Raising Alliance, a service run by Community Safety Glasgow) and UNICEF UK

and of the journeys of people who are controlled by traffickers. Any efforts to reduce options for people who have travelled to the UK depending on the route they travelled, which may have been outside of their control, will leave people vulnerable. We do not see how such work to limit options is compatible with the UK's international obligations.

The forward describes a fair and generous asylum system. We consider that, were the proposals implemented as they stand, they would introduce an unfair system with two tiers of migrants. Those who, due to factors outside of their control, including trafficking and exploitation, entered the UK through 'irregular' routes, or via a so called 'safe country' would have limited options or access to entitlements, leaving them open to further exploitation and unable to exercise rights. As FLEX have pointed out in their consultation response there is no such thing as a sham asylum-seeker or an illegal asylum-seeker. As an asylum-seeker, a person has entered into a legal process and everybody has a right to seek asylum in another country.²

The forward mentions 'unmeritous legal claims'- suggesting claims without merit are being brought which waste resources. This is again unevidenced and ignores that legal aid is regulated and requires an assessment of merit.

We are concerned that the aim to remove people more easily from the UK risks denying people access to legal protection and entitlements and removing people to danger, including re-trafficking. It is unclear to us how the 'one stop' removals process will differ from the Fast Track system which was previously found to be unlawful. We ask the government to take note of medical evidence which sets out clearly the time people take to disclose severe trauma, that such disclosure is often not possible until people have been able to feel safe and that people will generally not self-identify as victims.

The foreword does not explain why reforms to the support system for people who have survived slavery are set within the Plan for Immigration. This dangerously conflates two issues in a way which is confusing and which undermines the realities of slavery and exploitation in the UK. It is correct that these issues are sometimes linked; insecure or restrictive immigration status combined with the hostile

² See commentary from the UNCHR available at: <https://www.unhcr.org/uk/asylum-in-the-uk.html>

environment on immigration, data sharing with immigration enforcement and a well-founded fear that people with insecure status who report a crime against them will end up in immigration detention means that people with insecure status are vulnerable to exploitation. Continuing to muddle the issues undermines the slavery support systems, the authorities who should be focusing on identifying and addressing crimes against people, and of course exploited individuals themselves. [UK nationals, who made up the most common nationality of all referrals to the NRM in 2019, accounting for 27% \(2,836\) of all potential victims](#), and non British nationals, whatever their immigration status need to know that the system is there to identify them and support them to justice and to rebuild their lives.

Most importantly we are concerned that the New Plan for Immigration has not benefited from the wealth of lived experience. People with lived experience of course understand the operational details of how these systems play out in practice and are best placed to test and explain what does and what does not work. Actively facilitating learning from lived experience has significant potential to build efficient and fair systems for immigration and slavery support. Unfortunately, neither the drafting of the plan or the consultation have done enough to build on this. The Plan was published without consultation even with established stakeholder group such as the Modern Slavery Strategy and Implementation Groups. Consultation on the plan has been extremely limited. The online consultation is not accessible and runs for a very short period (6 weeks) during Ramadan and public holidays. It was also during an election period for local and regional elections in England, Wales. This is in addition to national elections in Scotland and means that key local and regional and national government agencies will not be able to contribute to the evidence. There have been additional consultation groups but these have been limited in scope and attendance. People with lived experience of slavery have contacted ATMG, keen to share their learning but unsure of how they can do this given the very limited and inaccessible opportunities. It is vital that the Home Office ensure that they work with people with lived experience, actively facilitating input, to address this. We also feel it is important that a wide range of organisations respond to the consultation – not just migration sector organisations, but people who work across the violence against women’s sector, children’s rights, disability, health and mental health, education, labour, anti-trafficking and exploitation, housing and homelessness, and LGBT+ organisations.

A. Not very effective

- B. Not very effective
- C. Don't know
- D. Not at all effective
- E. Not at all effective
- F. Not at all effective
- G. Not at all effective

Q2.(C) Reforming legal processes to ensure speedier outcomes

Ensuring high quality, publicly funded legal assistance is key to ensure those vulnerable in our society can access their rights. We would welcome reforms to the legal process which ensure access to independent advice for all British citizens and migrants. We would oppose legal process reform which seeks to limit access or restrict availability of or access to advice, or which diminish the quality of specialist advice.

Improvement to the way Immigration Rules are written and presented to caseworkers and advocates would make them easier to complete for applicants and these proposals are set out in detail in the Law Commission's 'Simplifying of the immigration rules' report.³ In line with the Commission's recommendations, we would welcome improvements on the structure of the Rules as well as more clarity on the cross over on how the rules interface with supporting guidance and application forms.

Overall, ATMG believes this question is misleading. While the aim of this question implies a commitment to increase the procedural fairness of the system then the remaining questions in the proposal would set this out clearly. However, the proposals largely muddle and suggest a commitment to break-apart and restrict access to the current asylum system, meaning the new system will be far from fair.

Q2.(D) Requiring those who claim asylum and their legal representatives to act in 'good faith' by providing all relevant information in support of their claim at the earliest opportunity.

³ https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2020/01/6.6136_LC_Immigration-Rules-Report_FINAL_311219_WEB.pdf

For individuals fleeing persecution and having experienced exploitation, disclosure of their experiences and ability to lodge protection claims is marred with difficulty. This is made worse for those who have suffered significant trauma from their experiences. 'Good faith' proposals fail to take into account the complexities of trauma and how this impacts disclosure. The traumatic and stigmatising nature of human trafficking can make disclosure difficult, even within community settings.⁴ Equally, in the context of modern slavery and cases of torture or other degrading treatment, it is widely accepted that disclosure of evidence is often delayed. These proposals fail to take into account the non-linear reality of exploitation. The proposals of a 'one-stop-process' infer that individuals are able to put forward the many different aspects of a protection case at one time, or indeed that these aspects are all connected. This is not our understanding of the presentation of people seeking asylum and or victims of exploitation. The Trauma Informed Code of Conduct, (TiCC)⁵ recognises that the only way to encourage safe disclosure from traumatised individuals is to establish 'a working relationship of mutual trust'.⁶ It goes on to note that this process takes time, and encourages professionals to permit survivors of exploitation and other degrading treatment to understand that 'significant time'⁷ is needed to build and maintain trust.

These barriers to reporting experiences of exploitation are exacerbated further by immigration insecurity. Individuals may fear arrest, detention, or even forced removal or deportation, especially in cases where their forced labour included a criminal element.⁸ The UK's Statutory Guidance on victim support itself recognises that "it is not uncommon for traffickers and exploiters to provide stories for victims to tell if approached by the authorities. Errors, omissions and inconsistencies may be because their initial stories are composed by others and they are acting under instruction." As FLEX point out in their consultation response the good faith requirement could unjustly penalise individuals who have been coerced and controlled to give certain accounts or withhold information by their exploiters.

⁴ Fukushima, A., & Gonzalez-Pons, K., Gezinski, L., & Clark, L. Multiplicity of stigma: cultural barriers in anti-trafficking response. *International Journal of Human Rights in Healthcare* 13(2), 125-142 (2020). Accessible: https://www.researchgate.net/publication/340943152_Multiplicity_of_stigma_cultural_barriers_in_anti-trafficking_response

⁵ <http://www.helenbamber.org/wp-content/uploads/2019/01/Trauma-Informed-Code-of-Conduct.pdf>

⁶ Ibid, 6.

⁷ Ibid, 6.

⁸ FLEX/LEAG (2019). Detaining Victims: Human Trafficking and the UK Immigration Detention System. Accessible: <https://labourexploitation.org/publications/detaining-victims-human-trafficking-and-uk-immigration-system>

In 2017 the Government pledged funding for 'Places of Safety', a scheme to help earn the trust of survivors to allow them time and a safe space to disclose their experiences and to consider entry into the NRM. Under the measures, suspected adult victims leaving immediate situations of exploitation would have access to 'assistance and advice' for up to 3 days before deciding on whether to enter the NRM. ATMG and partners at the time expressed that the scheme could successfully boost referrals, by remedying the lack of guaranteed legal help at the point of identification.⁹ However, the scheme has not yet materialised.¹⁰ Currently, there is no automatic right to legal aid for victims prior to entering the NRM, so many victims are not aware of the rights, options and support available to them when they are at their most vulnerable.¹¹ Access to legal aid ensures those most vulnerable in our society are able to challenge procedural fairness, without this access to justice is limited. It follows that for people to disclose their experiences they should have access to independent and free legal advice prior to entering the NRM. Without this, the proposal of 'good faith' is both impractical and unfair.

In Detention Centres and Immigration Removal Centres, disclosure is also severely impeded because these prison-like settings fail to provide a holistic environment for those detained. The Jesuit Refugee Service UK (JRS UK), an organisation that supports people held in immigration detention, regularly offers pastoral support to victims of trafficking in detention settings, and reports that victims often find it extremely difficult to talk about their experiences. Relationships of trust, and contexts in which survivors feel safe, are important to facilitating disclosure. These barriers to reporting experiences of exploitation are exacerbated further by immigration insecurity.

Once within the detention estate, survivors of trafficking may still not be recognised by safeguards against 'unsuitable' detention. Once a decision is made to detain, survivors' detention may be prolonged due to barriers to legal representation or advocacy. Research has already shown that survivors with experiences of sexual

⁹ British Red Cross et al (2018). Principles that underpin early support provision for survivors of trafficking. Accessible: <https://www.antislavery.org/wp-content/uploads/2019/01/Places-of-safety-principles.pdf>

¹⁰ May Bulman, 'Thousands of suspected trafficking victims 'slipping through net' when identified by authorities, figures show', *The Independent*, (London, 24 June 2020). Accessible: <https://www.independent.co.uk/news/uk/home-news/modern-slavery-victims-uk-home-office-authority-a9580931.html>

¹¹ Home Office (2021). Modern Slavery: National Referral Mechanism and Duty to Notify Statistics. 5. Accessible: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970995/modern-slavery-national-referral-mechanism-statistics-end-year-summary-2020-hosb0821.pdf

violence report more difficulties in disclosing personal information during Home Office interviews than survivors of other forms of serious ill-treatment.¹²

A 2019 investigation by the Independent Chief Inspector of Borders and Immigration (ICIBI) concluded that the Home Office tends to focus "on the fact that someone is working illegally rather than that they may be a victim of abuse, exploitation and slavery."¹³ Detention and the threats associated with it actively impede survivors from making disclosure in respect of the abuse suffered at the hands of their traffickers.¹⁴ As explained by FLEX in their response It is not only the detention of victims that is harmful, but the fear of detention and removal places victims at increased risk of harm and undermines the UK's efforts to identify victims, shut down exploitive practices and combat modern slavery operations. This includes the enforcement and identification efforts of police and labour market enforcement bodies. FLEX and LEAG research has found that undocumented migrants believe that reporting abuse and exploitation could put them at risk of arrest, detention and removal from the country. Their research found that despite not being legally required to report irregularities with workers' immigration status to immigration authorities, all labour inspectorates in the UK have done this at least once since 2016. Police are also not legally required to inform immigration enforcement of undocumented victims of crime, but there are a number of instances where they have done so. Migrants are also being put at risk during simultaneous operations, which have conflicting priorities: identify and support workers who have experienced abuse and exploitation, and find migrants with irregular status.

FLEX explains in their consultation response how these practices are having a significant impact on the UK's efforts to tackle labour exploitation. They found evidence that migrants are enduring long periods of exploitation for fear that reporting will lead to negative immigration consequences. Documented migrants who are unaware of their status, or the rights derived from it, are also fearful of reporting. We identified a number of cases in which police and labour inspectors missed valuable opportunities to support workers and identify exploiters due to their close relationship

¹² Bogner D., Brewin C., & Herlihy J. Refugees- Experiences of Home Office Interviews: A Qualitative Study on the Disclosure of Sensitive Personal Information. *Journal of Ethnic and Migration Studies* 36(3), 519-535

¹³ Independent Chief Inspector of Borders and Immigration (2019). An inspection of the Home Office's approach to Illegal Working (August – December 2018). Accessible: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800641/An_inspection_of_the_Home_Office_s_approach_to_Illegal_Working_Published_May_2018.PDF

¹⁴ Bogner D., Brewin C., & Herlihy J. Refugees- Experiences of Home Office Interviews: A Qualitative Study on the Disclosure of Sensitive Personal Information. *Journal of Ethnic and Migration Studies* 36(3), 519-535

with immigration authorities. The evidence shows that the UK is experiencing a cycle of employer impunity, with a number of abusive and exploitative employers financially benefiting from underpaying and mistreating their workforce without facing consequences.

As such, we endorse FLEX's recommendation that labour inspectors and police introduce secure reporting systems that guarantee workers will not face immigration consequences when they report problems at work.

In cases of children, many are too traumatised to articulate what has happened to them and many children remain under the control of traffickers while in supported care settings which can impact testimony.

Q2. (E) Enforcing the swift removal of those found to have no right to be in the UK, including Foreign National Offenders. (F) Eliminating the ability for individuals to make repeated protection claims to stop their removal, when those follow-up claims could have been raised earlier in the process.

ATMG believes this proposal is vague and contradictory. Furthermore the rhetoric around rights-based immigration perpetuates a narrative of hostility and creates a two tier system of deserving and undeserving victims. It is not clear who the Government is referring to with this statement. For those without regularised immigration status, a well founded fear of authorities is one of the major barriers around people making themselves known to authorities. This leaves people in this situation open to exploitation. For individuals in destitution, the links between poverty and exploitation are well known.¹⁵ Although the statements in this section of the proposals are vague, we believe this proposal has already been implemented in part via the changes to the immigration rules in December 2020. These were amended to introduce a more "robust and consistent framework against which immigration applications are assessed or permission cancelled on suitability grounds." Paragraphs 9.21.1. and 9.21.2. of the Immigration Rules set out a discretionary basis for the refusal of permission to stay, where the application was made on or after 1 December 2020, and for any permission held to be cancelled on the grounds of rough sleeping in the UK. In April 2020, guidance relating to these changes were introduced. Much to our concern these new rules are likely to affect

¹⁵ See research of the Independent Anti-Slavery Commissioner, together with the charity The Passage: <https://www.antislaverycommissioner.co.uk/media/1115/understanding-and-responding-to-modern-slavery-within-the-homelessness-sector.pdf>, and the TILI project, a collaboration between the charities Crisis, Hestia, BAWSO, Belfast Women's Aid and Shared Lives; Scottish Parliament's Equality and Human Rights Committee: <https://www.crisis.org.uk/ending-homelessness/project-tili/>

both victims of modern slavery before they have been identified and those facing homelessness or destitution after being confirmed as victims but not yet granted status and struggling to access support.

In regard to Foreign National Offenders (FNO), many survivors of modern slavery are forced to commit criminal acts as a part of their exploitation, such as pick-pocketing, drug cultivation or fraud. In 2020, potential victims were most commonly referred to the NRM for cases related to purely criminal exploitation, which accounted for 34% (3,568) of all referrals.¹⁶ However the unevidenced assertion by Government that there has been an “*alarming increase in the number of illegal migrants including Foreign National Offenders (FNO’s) and those who pose a national security risk to our country seeking modern slavery referrals...*” is not something ATMG recognise. The conflation of those who ‘have no right to be in the UK’ with FNO is contradictory and inflammatory. ATMG member Hope for Justice notes that the unqualified assertion that there is an alarming increase in FNO and those who pose a national security risk seeking referrals into the NRM is not supported by any substantial data. In their experience victims of modern slavery have vulnerabilities targeted by exploiters. One of these vulnerabilities is targeting those with often minor previous offending behaviour for instance in the Operation Fort case, one of Europe’s largest trafficking cases victims were targeted by traffickers from outside prisons. This did not negate that they are a genuine victim, vulnerability or need for immediate safeguarding and assistance as a victim of a serious crime. Many of these victims with ongoing support and advocacy from Hope for Justice went on to give evidence against their exploiters resulting in the conviction of 10 traffickers. Pre-existing vulnerabilities should not be used by the state to prevent victims being identified, safeguarded and access immediate support otherwise traffickers will continue to act with impunity knowing that victims will not come forward and give evidence against them for fear of detention and deportation. This will serve for traffickers to increase the tactic of recruitment of those with previous offending behaviour knowing that they will not come forward and will be deported before there is any opportunity to be safeguarded, supported or make a decision as to whether to engage with and support a criminal investigation.

¹⁶ Home Office (2021). Modern Slavery: National Referral Mechanism and Duty to Notify Statistics. 5. Accessible: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970995/modern-slavery-national-referral-mechanism-statistics-end-year-summary-2020-hosb0821.pdf

Currently, mechanisms to prevent the conviction of both UK and non-UK national survivors, for crimes committed as part of exploitation, are not consistently invoked. This puts victims of criminal exploitation at particular risk of immigration detention, or for those serving custodial sentences in Her Majesty's Prisons (HMP). ATMG's recent review of Multi-Agency Assurance Panels¹⁷ (MAAP) evidenced the lack of support for potential and actual victims of modern slavery in prisons. In some cases, MAAP panellists concluded that the conditions under which evidence was obtained revealed a breach of Article 12 of the Convention, putting the reliability of the negative decision into question. For individuals who are imprisoned or detained while in the NRM, panels are appointed to review the negative decisions they receive. However, for these individuals it is unclear if their Article 12 entitlements are facilitated, either by the first responder or the prison service. Concerns raised with ATMG include a lack of access to independent and qualified interpreters. At times, we understand this role has been fulfilled by other prisoners who might speak the same language as the potential victim. It is easy to imagine that there are details of exploitation which an individual may feel unwilling or unable to disclose during these circumstances and inaccuracies with the interpretation itself. From evidence provided to the panels it appears prison officers are conducting interviews with potential victims in relation to their exploitation. It is unclear what if any training on modern slavery is provided to prison officers despite an increasing number of victims being imprisoned. With this uncertainty and the lack of support provisions provided to victims of exploitation in prison, officers of HMP should not conduct interviews with prisoners who are in the NRM.

Inspectorate reports suggest that provision varies widely. There is no requirement to provide a suitably qualified female interpreter where requested. Unless women can make themselves understood and feel able to speak about the circumstances of their alleged offence, which may involve abuse and coercion, criminal justice agencies cannot make informed decisions about arrest, detention, conviction and sentencing.¹⁸ In addition, The Labour Exploitation Advisory Group have reported on the lack of provisions for people in prison, meaning there is no mechanism for identification while serving custodial sentences or while awaiting deportation:

¹⁷ https://www.antislavery.org/wp-content/uploads/2021/02/MAAPs_report_final.pdf

¹⁸ Still No Way Out: Foreign national women and trafficked women in the criminal justice system, The Prison Reform Trust and Hibiscus, 2018, page 8, available at: <https://hibiscusinitiatives.org.uk/wp-content/uploads/2018/09/Still-No-WayOut-summary-report.pdf>

*The lack of mechanisms to identify and support victims of human trafficking in prison under immigration powers is highly likely to mean some victims are not identified at all and are therefore denied support, remedies and recovery to which they are entitled under the NRM.*¹⁹

Based on this feedback and concerns raised with ATMG by panellists, Article 12 entitlements are being denied to individuals who are detained. Not only is the quality of the evidence questionable because of the way it is collected but the conditions under which it was obtained fails to meet the standards of the Convention as defined in Article 12. Qualified interpreters must always be used where potential victims require this provision. There is currently no guidance for HMP relating to support provisions for potential victims of trafficking or modern slavery, nor is HMP Service a designated first responder. In 2018, a report published by The Prison Reform Trust and Hibiscus identified the poor provisions for foreign national women UK prisons:

Under Q.2(E) the Government states that individuals with no right to be in the UK should be swiftly removed, but this statement is extremely vague in detail. For individuals who have been exploited, there is a potential breach of the article 16 of ECAT. The Convention requires parties to assess protection needs of individuals' and notes that 'any removal of a person to a territory where they are at risk of being trafficked will constitute a violation of the principle of non-refoulement.'²⁰ Without qualifying this proposal, ATMG is unable to have confidence in the Government's commitment to its international obligations. Furthermore, it is important to note that under UK law, removal of a person who is seeking refugee status is prohibited, this includes anyone who has an outstanding asylum claim or appeal. This principle is illustrated by the case *G v G* [2021] UKSC 9²¹ yet the statement in this section of the proposal does not appear to consider the UK's international obligations per the Refugee Convention.

For those who are subject to the "no recourse to public funds" (NRPF) condition, again this statement fails to take into account the wider context of this harmful provision. The pandemic has further highlighted the damaging effects of the no resource to public funds provision which leaves people with few or no options to question exploitative or unsafe working conditions. Leaving sections of the population with no safety net risks creating a two tier workforce, one which has options and can exercise

¹⁹ The Labour Exploitation Advisory Group (LEAG), 2019, available at: [Detaining Victims: Human Trafficking and the UK Immigration System | Focus on Labour Exploitation \(FLEX\)](#)

²⁰ <https://rm.coe.int/168008371d>

²¹ <https://www.supremecourt.uk/cases/uksc-2020-0191.html>

rights, including taking sick leave and maternity leave. The other, which has no recourse to public funds, needs to continue to work whatever the conditions in order to stave off destitution. It also leaves local authorities and social services unable to fulfil their roles for sectors of the population who have no recourse to public funds, creating potential for safeguarding and public health issues in addition to exploitation.

Q3.

ATMG believes the foreword and outline of the New Plan contains contradictory statements or proposals that lack depth and detail. ATMG is concerned about unevidenced claims made by the Secretary of State for the Home Department (SSHD) in the foreword, including statements such as “*child rapists, people who pose a threat to national security and illegal migrants who have travelled to the UK from safe countries have sought modern slavery referrals which have prevented and delayed their removal or deportation.*” This statement lacks empirical data or evidence. While some data has been released regarding FNO on the number and proportion of individuals detained and who subsequently were referred into the NRM, it shows that this figure is consistently low. In 2017 89 people (1%); 2018 79 people (1%) and 2019 182 people (3%).²² In terms of the percentage of the numbers of the potential victims entering the NRM system in these periods (2017) 5145 potential victims (1.7%); 2018 6993 (1.1%) and 2019 10,627 (1.7%). This is the only available data connecting FNO, detention and referrals into the NRM. These figures do not provide information on the circumstances of crimes committed or the seriousness of each offence. It is also unclear how many were found to be victims. What it does show, however, is that the number of FNO seeking referral into the NRM is extremely low, year on year. It is also important to note that committing acts of crime does not stop exploitation. Criminal exploitation is widely accepted as one of the leading forms of slavery. We believe the statements in the forward are unqualified and misleading.

ATMG believes urgent improvements are needed in relation to the Government’s response to modern slavery and the wider immigration system, however, the proposals as set out in the Home Office plan for immigration are harmful, impractical and risk undermining work to date in reducing the prevalence of modern slavery in the UK. They are also high level and it is unclear how many of them will be

²² Home Office Data on Detention Section 5 Table 2 (b) <https://www.gov.uk/government/publications/issues-raised-by-people-facing-return-in-immigration-detention/issues-raised-by-people-facing-return-in-immigration-detention#data-tables>

implemented in practice. While the coalition welcomes the opportunity to engage in constructive dialogue with the Government on matters relating to the protection and safeguarding of vulnerable migrants we believe the proposals put forward in this plan leave little space for constructive dialogue and fail to draw on professional or lived expertise. The proposals as set out will fail to protect migrants and victims of modern slavery and risk causing additional harm. These plans risk enabling and perpetuating exploitation through people smuggling or human trafficking. Having exited the European Union there is serious concern around the protections in place for EEA nationals who may have failed to apply for settled status due to a lack of information. This could include being due to being in a situation of exploitation. EEA nationals who then become irregular are likely to believe themselves trapped after 30 June, unsure how to regularise their status, or if their situation of exploitation will be considered a 'mitigating circumstance' for a late application. Additional concerns include a lack of routes for so called 'low skilled' migration which is likely to mean that EEA nationals who enter the UK on visit visas are targeted for irregular and exploitative work and told they cannot seek help due to their lack of status. Additional concerns following Brexit is around the lack of recovery options of EEA and other non British nationals. There is a fear that unless the NRM enables people to work that people will be unable to consent to an NRM referral, instead needing to remain in exploitative work in order to pay debts and provide for their families. It is not clear what information sharing for law enforcement is now in place with European police agencies. In the past this has played an important part in enforcement operations.

Moreover, we believe many of these proposals breach international law, namely the Refugee Convention, Council of Europe Convention on Action Against Trafficking in Persons (ECAT)²³ or UN Convention on the Rights of a Child.²⁴

The proposals as set out are high-level and as such it is not possible to comment on the detail or many of the practical implications as to how they will work – this is a poor way to conduct a public consultation. ATMG's members are concerned about the timing of the consultation; seeking to consult at time of local, regional and national elections in many parts of the UK severely limits the ability of regional government agencies to proactively contribute to this conversation. The time period

23 Explanatory Report to the Council of Europe Convention on Action Against Trafficking in Human Beings para. 173 sourced at <https://rm.coe.int/16800d3812>

24 <https://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>

for the consultation is anyway short, a period of 6 weeks which falls over Easter, public holidays and Ramadan. The online consultation is not sufficiently accessible and there has been no transparency around any consultation beyond this.

More broadly, there appears to have been little consideration to the wider constitutional implications for some of these proposals particularly concerning Chapter 6 on modern slavery or how the immigration proposals will undermine positive commitments from other UK Governments. Scotland continues to embed a human rights based approach to all areas of Government business and this approach is welcomed; these proposals risk undermining these efforts.

Chapter 2

Q.8 The Government recognises the importance of reuniting those who are in the UK who are in genuine need of protection, with their family members. How important, if at all, do you think each of the following proposals would be in meeting this objective? Reuniting an adult with refugee status in the UK with...

1. Reuniting an adult with refugee status in the UK with their spouse or partner, wherever their spouse/partner may be in the world.

Very important

2. Reuniting an adult with refugee status in the UK with their own child who is under the age of 18, wherever their child may be in the world.

Very important

3. Reuniting an adult with refugee status in the UK with their own adult child who is over the age of 18, wherever their child may be in the world.

Very important

4. Reuniting an adult with refugee status in the UK with a close family member (e.g. sister, brother), wherever that family member may be in the world.

Very important

5. Reuniting an adult with refugee status in the UK with another family member (e.g. uncle, aunt, nephew, niece), wherever that family member may be in the world.

Very important

Q.9 Now that the UK has left the European Union (EU), protection claimants who have sought international protection in an EU member state can no longer join family members in the UK using EU law.

This means those seeking international protection in the EU must apply to join family members in the UK under the Immigration Rules like those from the 'rest of the world'.

To what extent do you agree or disagree with this approach to apply the same policy to protection claimants seeking to join family members in the UK, regardless of where they are?

Strongly disagree

Q.10 Are there any other observations or views you would like to share relating to the UK Government's future policy on safe and legal routes for unaccompanied asylum-seeking children in the EU wanting to reunite with family members in the UK?

The questions in this chapter synthesise immigration rules with safe and legal routes for unaccompanied children who are seeking to join family members in the UK. These two proposals are in conflict with each other as immigration rules are not designed for the purposes proposed in this chapter. With the UK's exit from the EU, the Dublin III Regulation has been repealed. Its purpose is to determine what State is responsible for reviewing and considering an asylum application. The Dublin regulation is designed to protect the internationally accepted right of united families, stating that asylum seekers with family members under consideration for international protection in a member state or in the process of seeking asylum, have a right to be united with their family members and should be allowed to claim asylum in the same country. With the loss of the Dublin Regulations, new arrangements must be put in place to ensure the best interest of children, including those who are unaccompanied are upheld.

Q.11 Are there any other observations or views you would like to share relating to the UK Government's future policy on safe and legal routes for unaccompanied asylum-seeking children in the rest of the world (outside the EU) wanting to reunite with family members in the UK?

Please write in your answer and provide as much detail as you can

Chapter 4

Q.19 To protect life and ensure access to our asylum system is preserved for the most vulnerable, we must break the business model of criminal networks behind illegal immigration and overhaul the UK's decades-old domestic asylum framework. In your view, how effective, if at all, will the following proposals be in achieving this aim?

1. Ensuring that those who arrive in the UK, having passed through safe countries, or have a connection to a safe country where they could have claimed asylum will be considered inadmissible to the UK's asylum system.

Not at all effective

2. Seeking rapid removal of inadmissible cases to the safe country from which they embarked or to another third country.

Not at all effective

3. Bringing forward plans to expand the Government's asylum estate. These plans will include proposals for reception centres to provide basic accommodation while processing the claims of inadmissible asylum seekers.

Not at all effective

4. Making it possible for asylum claims to be processed outside the UK and in another country.

Not at all effective

Q.20 To protect the asylum system from abuse, the Government will seek to reduce attempts at illegal immigration and overhaul our domestic asylum framework.

In your view, how effective, if at all, will the following proposals be in achieving this aim?

1. Changing the rules so that people who have been convicted and sentenced to at least one-year imprisonment and constitute a danger to the community in the UK can have their refugee status revoked and can be considered for removal from the UK

Not at all effective

2. Supporting decision-making by setting a clearer and higher standard for testing whether an individual

has a well-founded fear of persecution, consistent with the Refugee Convention

Not at all effective

3. Creating a robust approach to age assessment to ensure the Government acts as swiftly as possible to safeguard against adults claiming to be children and can use new scientific methods to improve the Government's abilities to accurately assess age

Not at all effective

Q.21 The UK Government intends to create a differentiated approach to asylum claims. For the first time how somebody arrives in the UK will matter for the purposes of their asylum claim.

As the Government seeks to implement this change, what, if any, practical considerations should be taken into account?

Throughout this consultation, the Government conflates words such as 'asylum seeker' with 'illegal entry.' For those fleeing persecution and who are potential victims of trafficking, the proposals set out in this chapter are hostile and blame victims of exploitation and vulnerable migrants for a substandard, poorly funded immigration system. There is a concerning rhetoric that distinguishes worthy or genuine refugees with those who have used recognised 'safe and legal' routes to those who have come to the UK 'illegally.' Those who have entered via the more favoured 'legal' route are to be treated more fairly than those who have not. The result is a two-tiered system. For those who have travelled via a 'safe-third country', under these proposals their rights are being watered down. The rebuttable presumption that people can be returned to 'safe' countries as well as amending sections 77 and 78 of the Immigration and Asylum Act 2002 meaning people can be removed even if they have a pending asylum claim or appeal is both impractical and manifestly unfair. This is particularly concerning for potential and actual victims of modern slavery, who may have been exploited in a number of 'safe' countries before arriving in the UK. ATMG believes that the proposals around inadmissibility are a breach of the Refugee Convention. We would like to further stress how impractical we believe this proposal is. Going forward, anyone seeking asylum or humanitarian protection would effectively be stuck in limbo, and this would be exacerbated for people who might enter the NRM as part of the protection claim. People will await a decision on an asylum claim that might never come while at the same time be unable to be 'removed' to a 'safe' third country because the country does not acknowledge the removal request or arrangement.

We believe the only explanation for this is to frustrate a person's ability to claim asylum. The statement of changes to the immigration rules on 10 December, 2020 are not included in this consultation, however we believe they are relevant in the context of the proposals set out in Chapter 4 because they also limit where in the UK an asylum claim can be lodged. New 'designated' places of asylum are limited to asylum intake units, immigration removal centres, ports, airports or a location determined by the SSHD. Claims will no longer be received at sea or in 'territorial waters of the United Kingdom'. These changes are deeply concerning and will limit a person's ability to claim asylum or seek support if they are in a situation of exploitation or are without regularised immigration status. It is also unclear how people entering the UK by sea will be supported to safely reach UK land to claim asylum.

ATMG partners TARA point out in their consultation response that survivors of trafficking are frequently transited and exploited through apparently 'safe EU countries' with no choices or protection and many are unable to flee their situation of exploitation. These transnational dynamics of trafficking have been highlighted in the recent research '**The top 20 source countries for Modern Slavery Victims in the UK: Comparative Report**' April 2021 published by the University of Nottingham. Women have also told TARA that when they have approached authorities in other countries, including elsewhere in the UK and in EU states, they have been ignored or disbelieved and as a result their exploitation continued and/or they were re-trafficked. It is alarming that some of the language and proposals within the New Plan risks blaming survivors of modern slavery not only for the crime perpetrated against them but also for the failure of our systems to proactively identify them and provide ready access to support and protection.

TARA highlights how common victim blaming myths unfortunately prevail when women's credibility is questioned. Immediate queries as to why they did not escape without any apparent cognisance of psychological control and coercion, physical violence, fear, poverty, lack of awareness of their rights and wider gender inequalities creates a 'culture of disbelief' and risks a lack of further disclosure. This also places a burden on women to provide objective evidence of their exploitation. Such myths prevent many women from escaping their situation in transit or when in the UK and seeking assistance but also risks undermining their safety and

'credibility' when they are recovered and seek protection either via the NRM or immigration processes.

Regarding plans to increase the 'asylum estate' we believe this includes the development of reception centres as referenced in Q.23, and we respond to this in detail below.

The proposal to '*change the rules so that people who have been convicted and sentenced to at least one-year imprisonment and constitute a danger to the community in the UK can have their refugee status revoked and can be considered for removal from the UK*', we feel unable to respond to this proposal as it lacks detail or context. The proposals define serious criminality as those who have a custodial sentence of 12 months but this definition lacks any data or examples and without such the definition is flawed. It is not clear how this would work in relation to the Immigration rules around suitability which have similar thresholds around public order in respect of refusing or cancelling leave. The nexus between exploitation and forced criminality is well-established but has not been considered in this proposal. If a person has committed crime, historically, (and particularly in cases of young people) this is one of the elements most targeted by criminals. By narrowing the public order threshold, victims will not come forward and will miss their right to protection or in the case of modern slavery victims, to recovery and reflection.

This proposal is also particularly worrying for victims of modern slavery who may raise a defence via one of the UK's Human Trafficking or Modern Slavery Acts. Section 45 of the Modern Slavery Act was passed following significant parliamentary scrutiny. It was recognised as a vital part of the Act which would do much to protect victims who had been criminalised as part of their exploitation. Without it traffickers will be more able to exploit people with any history of criminality and will be incentivised to exploit people for criminal acts. Sexual offenses and terrorism are already expressly excluded from s45 MSA.

ATMG has long advocated that more research and data is needed on the use of s45. We believe judges and officers of the court require enhanced training on modern slavery and human trafficking. Only improvements to data, training and other preventative measures will improve understanding of the circumstances that the defence is being exercised in and how its application is considered by the criminal justice system. In England and Wales, we have reviewed all cases which mention

section 45 of the Modern Slavery Act 2015. There are 16 cases in total, 5 cases contain substantive commentary or apply section 45 and 11 cases mention section 45 with no substantive commentary. In light of the small sample size, it is not possible to pick out any broad themes in relation to the way in which the section 45 defence has been applied. The relatively small number of cases is due to the fact that the majority of first instance decisions in Crown Courts and Magistrates Courts are not reported. A similar point is made in the Home Office's Independent Review of the Modern Slavery Act 2015 (the "Independent Review"), which states that:

"There is no quantitative data available with which to assess the scale and impact of the statutory defence. It is therefore difficult to understand how the statutory defence has been used or potentially misused, other than considering qualitative case studies. In addition to the cases that are charged, it is of course possible that in some cases charges were never brought because of the existence of the defence; by their nature these cases will not be recorded. Anecdotally, we heard that the use of the statutory defence has increased".²⁵

The proposal to 'change the rules so that people who have been convicted and sentenced to at least one-year imprisonment and constitute a danger to the community in the UK can have their refugee status revoked and can be considered for removal from the UK'. With reference to s.45 and individuals raising a defence we believe this proposal would have disastrous consequences. Moreover the Government has not presented empirical data on the types of criminality where a defence might be commonly raised.

Q.23 The Government is aware that currently it can take many months to consider asylum applications and intends to ensure that claims from those who enter the UK illegally are dealt with swiftly and efficiently.

To help achieve this, in your view, which of the following steps would be the most important? Please rank the following statements from most to least important - (1 most important, 4 least. Please enter number 1-4)

To use asylum processing centres, to accommodate those who enter the UK illegally, whilst they await the outcome of their claim and / or removal from the UK

Do not rank these questions - unable to respond

²⁵ <https://www.gov.uk/government/publications/independent-review-of-the-modern-slavery-act-final-report>

To have an expedited approach to appeals, particularly where further or repeat claims are made by the individual

Do not rank these questions - unable to respond

To ensure there are set timescales for considering claims and appeals made by people who are in immigration detention, which will include safeguards to ensure procedural fairness. This will be set out in legislation.

Do not rank these questions - unable to respond

To ensure those who do not qualify for protection under the Refugee Convention, but who still face human rights risks, are covered in a way consistent with our new approach to asylum.

Do not rank these questions - unable to respond

Q.24 The Government is committed to strengthening the framework for determining the age of people claiming asylum, where this is disputed. This will ensure the system cannot be misused by adults who are claiming to be children.

In your view, how effective would each of the following reforms be in achieving this aim?

Bring forward plans to introduce a new National Age Assessment Board (NAAB) to set out the criteria, process and requirements to be followed to assess age, including the most up to date scientific technology. NAAB functions may include acting as a first point of review for any Local Authority age assessment decision and carry out direct age assessments itself where required or where invited to do so by a Local Authority.

Not at all effective

Creating a requirement on Local Authorities to either undertake full age assessments or refer people to the NAAB for assessment where they have reason to believe that someone's age is being incorrectly given, in line with existing safeguarding obligations.

Not at all effective

Legislating so that front-line immigration officers and other staff who are not social workers are able to make reasonable initial assessments of age. Currently, an individual will be treated as an adult where their physical appearance and demeanour strongly suggests they are 'over 25 years of age'. The UK Government is exploring changing this to 'significantly over 18 years of age'. Social workers will be able to make straightforward under/over 18 decisions with additional safeguards

Not at all effective

Creating a statutory appeal right against age assessment decisions to avoid excessive judicial review litigation.

Don't know

Q.25 Please use the space below to give further feedback on the proposals in chapter 4. In particular, the Government is keen to understand:

(a) If there are any ways in which these proposals could be improved to make sure the objective of overhauling our domestic asylum framework is achieved; and

(b) Whether there are any potential challenges that you can foresee in the approach being taken around asylum reform.

Please provide as much detail as you can.

As already stated, ATMG are extremely concerned about the proposals set out in chapter 4, in particular proposals around immigration detention and 'set timescales for considering claims and appeals made by people who are in immigration detention.' This approach is both impractical but places an unfair burden on individuals detained under immigration powers. There is an 'underlying assumption [...] that detention will not harm VOT, and that only the 'extra damaged/ill' individuals should have any exceptions.'²⁶ This proposal also assumes that for those individuals in immigration detention, obtaining medical evidence and independent legal advice poses little to no challenges. Setting rigorous timescales places the burden on a detainee to ready and organise their claims with they have little to no access to high quality independent legal advice. In immigration detention, legal advice is limited and many people are unable to access justice. This was exacerbated by the 2013 Legal Aid cuts which removed most immigration work from the scope of legal aid. In 2010 Bail for Immigration Detainees began conducting surveys every six months into immigration detainees' access to legal representation. Since the legal aid cuts, there has only been one year where, among those surveyed, the percentage with a legal representative was above 60%, and in a number of years this figure has fallen below 50%.²⁷

²⁶ https://us19.campaign-archive.com/?e=test_email_&u=b0caa1219ee121fb63ad3235a&id=0d47971dd0

²⁷ Bail for Immigration Detainees (2019). Spring 2019 Legal Advice Survey. Accessible: https://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/890/190523_legal_advice_survey_spring_2019.pdf

The quality of advice delivered at legal advice surgeries in Immigration Removal Centres has also been heavily criticised. In September 2018 the Legal Aid Agency sharply increased the number of providers of advice surgeries in Immigration Removal Centres, with the vast majority of providers being given a contract to deliver advice despite lacking experience of detention work. Parliament's Joint Committee on Human Rights stated in its report on immigration detention that changes to these Detained Duty Advice Scheme (DDAS) contracts "(have) raised concerns about whether there will be a consistent level of expertise, given that the decision to disperse contracts to over fifty firms will mean one firm may appear only once or twice per year in the rota and the possibility that some firms will not have a proven track record in detention work".²⁸

At last count there were more than 500 people detained in prisons under immigration powers, where access to legal advice is even more inadequate.²⁹ In a judgment handed down in February 2021 the High Court found the lack of publicly funded legal advice for immigration detainees held in prisons to be unlawful.³⁰

There are also significant barriers to accessing healthcare safeguards. Victims of trafficking have extremely complex physical and mental needs. Many will have suffered traumatic experiences beginning in childhood (i.e. abuse, neglect, exploitation) which will have made them specifically vulnerable to targeting for trafficking. These early traumatic experiences are likely to have then been compounded through the process of being trafficked for exploitation.³¹ Often individuals will not have been in regular contact (if at all) with a GP or their local health services. So much about the trafficking experience is related to control and breaching an individual's trust, that victims of trafficking will have difficulty in disclosing their experiences. As such, victims of trafficking need to be interviewed in a private environment, using professional interpreters and allowing a relationship of trust to develop.

²⁸ 'Immigration detention', House of Commons and House of Lords Joint Committee on Human Rights, HC 1484 HL Paper 278, 2017-19. Accessible:

<https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/1484/148402.htm>

²⁹ 'How many people are detained or returned?' (Home Office, 25 February 2021). Accessible: <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-december-2020/how-many-people-are-detained-or-returned>

³⁰ SM, R (On the Application Of) v Bail for Immigration Detainees [2021] EWHC 418 (Admin) (25 February 2021). Accessible: <https://www.bailii.org/ew/cases/EWHC/Admin/2021/418.html>

³¹ OSCE / Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (2013). Trafficking in Human Beings Amounting to Torture and other Forms of Ill-treatment. Accessible <https://www.osce.org/files/f/documents/d/b/103085.pdf>

The healthcare services within each detention centre should act as a key route through which vulnerable people in detention, including victims of trafficking, are identified. However, in practice there are many problems.

On arrival at an IRC each detainee receives an initial health screening within 2 hours. The screening does not however provide a conducive environment for disclosure of trauma, including past histories of trafficking. It often takes place late at night due to escort schedules, and at a point when the individual is likely to be in a state of distress and/or exhaustion. Additionally, as noted above, disclosure usually requires a high level of trust before it can occur, and the circumstances of the screening simply do not allow for this.

Rule 34 of the Detention Centre Rules 2001 provides that every detainee should be offered a 'full physical and mental examination' with a GP within 24 hours of arrival at the IRC. However, in practice the assessment sometimes does not take place or, frequently, is very brief and focuses on issues identified during the reception screening.

There is usually no proactive exploration of any history of trauma, including trafficking; instead, healthcare units appear to rely on detainees coming forward themselves, to report any histories of torture and to request a Rule 35 report. Rule 35 of the Detention Centre Rules 2001 places an obligation on doctors at the IRC to alert the Home Office to individuals whom they believe may be vulnerable, due to a history of torture, suicidal intentions or because their health is likely to be harmed by detention. Rather than Rule 35 reports being completed following a Rule 34 assessment in any case where the doctor has relevant concerns, detainees are instead allocated separate 'Rule 35 assessments'. In many IRCs significant waiting lists for Rule 35 assessment build up, leading to vulnerabilities not being assessed or documented for extended periods of time.

The indicators for a Rule 35 report do not match the indicators of risk in the AAR policy and there is no requirement to complete a Rule 35 Report for anyone suspected of being a survivor of trafficking. In practice, Rule 35 reports are generally only used in cases where the doctor believes the individual may be a victim of torture: in 2019, for example, over 98% of all Rule 35 reports raised (2193 of 2235) related to histories of torture.³² While the experiences of some victims of trafficking may fit the definition

³² Immigration Enforcement Secretariat, 'Re: Freedom of Information request – 57751' [Letter to L. Kett] 15 May 2020. Accessible: <https://www.freemovement.org.uk/wp-content/uploads/2020/07/2019-Rule-35-FOI-stats.pdf>

of torture used in Rule 35 reports, this is not true in all cases. As such, many trafficking victims may still go unidentified, and remain in detention despite their vulnerability.

Even in cases where a Rule 35 report is completed, there is no obligation on the Home Office to release the individual in question: under the Adults at Risk policy, if it is considered that negative immigration factors outweigh the person's vulnerability, their detention will be maintained. Less than a third of the Rule 35 reports raised in 2019 resulted in the individual in question being released from detention.³³

No equivalent to the Rule 35 process exists in prisons. As a result, vulnerable people held under immigration powers in prisons, including individuals who are victims of trafficking and whose convictions relate directly to that experience, are even less likely to be identified and may suffer prolonged detention as a result. The lack of an equivalent to the Rule 35 process in prisons has recently been found unlawful by the Court of Appeal.³⁴ The identification of victims of trafficking and other vulnerable individuals is further undermined by systemic issues such as a culture of disbelief amongst healthcare and other IRC staff, and a lack of appropriate staff training, for example on how to identify indicators of trafficking.

In addition, individuals' ability to self-report vulnerabilities may be severely hampered in detention, given the negative impacts that detention can have on a person's mental health,³⁵ and other issues such as language barriers and inadequate translation services (see below), a lack of awareness of rights, and distrust or fear of authorities.

It is for these reasons that we believe this proposal is highly nebulous and we are strongly opposed to it.

Children are set to face further barriers in the form of a revised age assessment process. The proposal of a National Age Assessment Board whose job would be to fix centralised standards and processes in determining the age of asylum seekers who claim to be under 18. We understand that the board would look to encourage and promote "scientific age assessment methods". These are highly invasive, are

³³ Ibid.

³⁴ Alexander Schymyck, 'Lack of Rule 35 process in prisons is unlawful, Court of Appeal finds' (Free Movement, 19 April 2021). Accessible: <https://www.freemovement.org.uk/lack-of-rule-35-process-in-prisons-is-unlawful-court-of-appeal-finds/>

³⁵ Alexander Schymyck, 'Lack of Rule 35 process in prisons is unlawful, Court of Appeal finds' (Free Movement, 19 April 2021). Accessible: <https://www.freemovement.org.uk/lack-of-rule-35-process-in-prisons-is-unlawful-court-of-appeal-finds/>

known to be inaccurate, and will fail to provide the certainty the Government is seeking. We are deeply concerned by proposals to allow immigration officers instead of social workers to make age assessments – these significantly fail to adopt a child centred, rights based approach.

In their response to this proposal, the VITA network have suggested that the uses of age assessments could:

“lead to young persons arriving not declaring themselves for fear of being assessed as adults. They have also been clear that The assumption should be that detention is likely to cause significant harm to anyone who has experienced trauma like trafficking. Detention is not natural or beneficial for any human being and is designed to be a consequence for those who have taken illegal action. Detention does not facilitate or enable the enjoyment of human rights, which is what VOT should be being supported to do.”³⁶

ATMG fully endorses the Refugee and Migrant Children’s Consortium New Plan³⁷ for Immigration response on age assessments. As partners in the Scottish Refugee Council highlight in their submission:

“Section 12 of the Human Trafficking and Exploitation (Scotland) Act 2015 regarding the presumption of age is the domestic implementation of Article 10 of ECAT. It is impossible to fully comment of proposals regarding age assessment as the proposals made in Chapter 4 of the New Plan are lacking in detail. While some of the detail was presented verbally in a workshop by Home Office staff it was very unclear which provisions were intended to be implemented in Scotland and which were not. What is clear is that the Scottish Parliament has devolved competence over Human Trafficking, Childcare and local authority support. The Scottish Government has produced age assessment guidance aimed at equipping Social Workers with to assess eligibility for support under section 25 of the Children Scotland Act 1995.

³⁶https://mailchi.mp/6002ef41f21d/vita-network-welcome-newsletter-6267666?e=fe3194a297&utm_medium=email&_hsmi=122366664&_hsenc=p2ANqtz-_8hya9LljKP2OHmmoiedkGSG0mZi5WbMrgdvtroGfl-JU-VMPTyj3K6XDSmelshrqqZTI2dTalpImRIWfU4o96rHsYMUJhHynoF3Ka7DIIK4TPWCMo&utm_content=122366664&utm_source=hs_email

³⁷ paras 130 & 131

In addition, ATMG endorse all of the recommendations of the Refugee and Asylum Forum³⁸ regarding their concerns around Separated children and age assessment proposals. In their submission they highlight:

“Health and Social Care (HSC) Trust social work teams have developed specialisms and expertise in the care of separated children in NI. Social workers operate within a complex legal and policy framework developed by the NI Executive and the NI Assembly that is tailored to the particular needs of children and practitioners in NI. Social workers are regulated by the NI Social Care Council, which lays an Annual Report to the NI Assembly.

Forum members strongly oppose this proposal whereby aspects of NI social work in relation to their engagement with separated children would be undertaken by members of the new National Age Assessment Board as that would bypass NI accountability structures. This includes the role played by the NI Commissioner for Children and Young People, and ultimately risks a lesser standard of protection for this group of vulnerable children.

Age assessments are a sensitive matter and a complex process. Forum members consider that they should be conducted by social workers, whose practice is rooted in the NI Children’s Order. It is not appropriate for age assessments to be conducted by Immigration Officers. Further, the existing legal process relating to age assessment is based on the common law and has developed to reflect the complex, nuanced issues of a process which has profound and potentially life-long implications for children and young people. Such complexities cannot be readily translated into legislation.

No reference is made to the role of the NI Independent Guardians. Forum members are proud that NI was the first jurisdiction in UK and Ireland to develop a statutory system of independent guardianship for all separated children.³⁹ Legislation provides

³⁸ The Refugee and Asylum Forum is an informal network of organisations with direct experience of providing support and services to asylum seekers and refugees in Belfast. Our membership is diverse and includes small community organisations, national charities and some statutory agencies. Our collective expertise is wide and spans health and social care, accommodation, integration and participation, legal rights, welfare as well as policy development. The Refugee and Asylum Forum is regularly attended by officials from the Executive Office, the Health & Social Care Trust, the Education Authority, etc

³⁹ Article 21 of the Human Trafficking & Exploitation (Criminal Justice and Support for Victims) Act (NI) <https://www.legislation.gov.uk/ni/2015/2/contents> 2015.

for Independent Guardians to be consulted on and to input in all decisions relating to the child, which includes in relation to age assessments.

Any reforms relating to unaccompanied asylum seeker children must recognise the integrity and authority of NI's social work teams and Independent Guardians.

Refugee and Asylum Forum recommends that:

- Age assessments in NI are only conducted by NI Social workers who continue to operate within their regulatory body.
- Any new arrangements for age assessment must include NI representation and must take into account NI Social Work Specialisms, Independent Guardianship and NI accountability structures.

The proposal to use asylum processing centres to accommodate those who enter the UK 'illegally' whilst they await the outcome of their claim and or removal from the UK is strongly opposed by ATMG.

Similarly, the recent examples of Napier and Penally barracks which are currently being investigated by the ICBI demonstrate the dangerous and unsuitability of reception centres for vulnerable people. During the 2020/21 Home Affairs Select Committee review into Home Office Covid19 preparedness, and also the committee's hearings on the crossing of small boats in the English Channel, considered the methods employed by the Home Office in screening and accommodating asylum seekers. The Home Affairs Select Committee noted in evidence provided by ATMG member, The Helen Bamber Foundation (HBF), that 'many vulnerable clients who require a single occupancy room remain in shared rooms in Initial Accommodation (IA) including several individuals who are sharing with "strangers",⁴⁰ in some cases with up to three others, despite being granted single room accommodation by the Home Office. HBF went on to report that clients who remain in shared rooms are "terrified of contracting the virus and unable to adequately distance or isolate themselves".⁴¹ HBF went on to report that clients who remain in shared rooms are "terrified of contracting the virus and unable to adequately distance or isolate themselves".⁴²

⁴⁰ <https://committees.parliament.uk/publications/2171/documents/20132/default/>, Helen Bamber Foundation (COR0113)

⁴¹ *Ibid*, 26.

⁴² *Ibid*, 26.

We believe that the proposal for asylum processing centres demonstrates a clear lack of institutional memory on the part of the Government. The language used here, specifically the word ‘process’ implies a fast-tracked approach to screening individuals seeking asylum. This was implemented in 2020, when people were arriving in the UK by boat, as part of the Channel crossing. It was found unlawful, with the High Court ordering the Home Office to interview asylum seekers properly, having failed to implement the proper legal test for investigating human trafficking.

Additionally, when questioned on the suitability of the fast-track asylum screening process in place last year for small boat arrivals in Kent, the Home Office recognised that this was a flawed process and acknowledged that they were not aware of how many young people were ending up in immigration detention.⁴³

There are long-standing, well evidenced failings around suitable standards of accommodation for asylum seekers, as set out in the British Red Cross’ report “Far from Home” published in April 2021:

*“There have been many detailed reports over several years raising concerns about poor quality, unsanitary and, in some cases, unsafe accommodation provided to people seeking asylum. Among other serious issues, these reports have described vermin-infested accommodation, ceilings falling in, pregnant women struggling to access healthcare and survivors of torture and human trafficking being forced to share a bedroom with strangers.”*⁴⁴

For victims of modern slavery, a recent FOI confirmed that as of the 31 July 2020, of the individuals receiving support through the Adult Victims of Modern Slavery Contract (AVMS Contract), 15% were in accommodation support and 85% were in outreach support.⁴⁵ Outreach support covers a broad spectrum of accommodation. A significant number of modern slavery victims are currently housed in NASS accommodation research demonstrates how unsuitable this accommodation is for victims of modern slavery.⁴⁶

⁴³ <https://committees.parliament.uk/oralevidence/1310/pdf/>

⁴⁴ <https://www.redcross.org.uk/about-us/what-we-do/research-publications>

⁴⁵ FOI 59922

⁴⁶ <https://www.antislaverycommissioner.co.uk/media/1259/day-46.pdf> (Day 46 Report)

Chapter 5

Q.26 The Government wants to ensure the asylum and appeals system is faster, fairer and concludes cases more effectively. The Government's end-to-end reforms will aim to reduce the extent to which people can frustrate removals through sequential or unmeritorious claims, appeals or legal action, while maintaining fairness, ensuring access to justice and upholding the rule of law.

In your view, how effective, if at all, will each of the following intended reforms be in achieving these aims?

1. Developing a "Good Faith" requirement setting out principles for people and their representatives when dealing with public authorities and the courts, such as not providing misleading information or bringing evidence late where it was reasonable to do so earlier.

Not very effective

2. Introducing an expanded 'one-stop' process to ensure that asylum claims, human rights claims, referrals as a potential victim of modern slavery and any other protection matters are made and considered together, ahead of any appeal hearing. This would require people and their representatives to present their case honestly and comprehensively – setting out full details and evidence to the Home Office and not adding more claims later which could have been made at the start.

Not very effective

3. Considering introducing a ground of appeal to the First Tier Tribunal for certain Modern Slavery cases within the 'one-stop' process.

Q.27 The Government wants to ensure the asylum and appeals system is faster, fairer and concludes cases more effectively. The Government's end-to-end reforms will aim to reduce the extent to which people can frustrate removals through sequential or unmeritorious claims, appeals or legal action, while maintaining fairness, ensuring access to justice and upholding the rule of law.

In your view, how effective, if at all, will each of the following intended reforms be in achieving these aims:

1. Providing more generous access to advice, including legal advice, to support people to raise issues, provide evidence as early as possible and avoid last minute claims.

Don't know

2. Introducing an expedited process for claims and appeals made from detention, providing access to justice while quickly disposing any unmeritorious claims.

Not at all effective

3. Providing a quicker process for Judges to take decisions on claims which the Home Office refuse without the right of appeal, reducing delays and costs from judicial reviews.

Not at all effective

4. Introducing a new system for creating a panel of pre-approved experts (e.g. medical experts) who report to the court or require experts to be jointly agreed by parties.

Don't Know

5. Expanding the fixed recoverable costs regime to cover immigration judicial reviews (JRs) and encouraging the increased use of wasted costs orders in Asylum and Immigration matters.

Not at all effective

6. Introducing a new fast-track appeal process. This will be for cases that are deemed to be manifestly unfounded or new claims, made late. This will include late referrals for modern slavery insofar as they prevent removal or deportation.

Not at all effective

Q.28 The Government believes that all those who are subject to the UK's immigration laws, including those who have arrived here illegally or overstayed their visa, should be required to act in good faith at all times. Currently, the system is susceptible to being abused and there has to be an onus on individuals to act properly and take steps to return to their country of origin where they have no right to remain in the UK. This duty will apply to anyone engaging with the UK authorities on an immigration matter.

As a part this requirement, to what extent do you agree or disagree with each of the following principles:

1. Individuals coming to the UK (as a visitor, student or other legal means) should leave the country on their own accord, by the time their visa expires

Strongly disagree

2. Individuals seeking the protection of the UK Government should bring their claims as soon as possible. Individuals seeking the protection of the UK Government should always tell the truth

Strongly disagree

3. Failure to act in good faith should be a factor that counts against the individual, when considered by the Home Office or judges as part of their decision making

Strongly disagree

4. Where an individual has not acted in good faith, this will be a relevant and important factor which decision Makers and judges should take into account when determining the credibility of the claimant.

Strongly disagree

Q.29 The Government proposes an amended ‘one-stop process’ for all protection claimants. This means supporting individuals to present all protection-related issues at the start of the process. The objective of this process is to avoid sequential and last-minute claims being made, resulting in quicker and more effective decision making for claimants.

Are there other measures not set out in the proposals for a ‘one-stop process’ that the Government could take to speed up the immigration and asylum appeals process, while upholding access to justice? Please give data (where applicable) and detailed reasons.

As part of this submission, ATMG has also worked with members of Survivor Alliance⁴⁷ who submit the following response to Chapter 5:

Developing a “Good Faith” requirement setting out principles for people and their representatives when dealing with public authorities and the courts, such as not providing misleading information or bringing evidence late where it was reasonable to do so earlier.

- People should not be penalised for not being able to disclose everything at once, it makes no consideration for the effect of trauma, confusion, fear, trust building, lack of evidence. If you are brought here by traffickers, you may have no understanding of what asylum is and it can take years to self-identify as being trafficked. Traffickers withhold evidence. The survivor may be unable to disclose through fear and lack of trust with authorities. Survivor’s need time to build trust and come to terms with what has happened to them and understand what is being asked of them. Trauma and PTSD can result in a survivor being unable to share what has happened to them.

⁴⁷ <https://www.survivoralliance.org/>

- Victims may need time to access suitable support and legal advice
- Dealing with people who have gone through trauma any “faster” process stated by the HS is the worst way of collecting information/ evidence from such people. Eg. Someone who has gone through rape or who was trafficked for sex could never deposit all they have gone through not in 1 or 2 years, it something that can not be explained in few hours.
- There is concern that this is an intention to return to the previous fast track system that resulted in mass deportation and placed victims in further harm and resulted in further exploitation.
- How can a fast track process be free of bias and discrimination when the objective is for a speedy process.
- How do they access people cases if they are unmeritorious or meritorious
- Ensuring access to justice can mean the Home Office could have access to individual detail through banks etc. They should tell us what they mean.
- What measure would they put in place to consider this “Good Faith”.
- The term “Good faith” in our understanding is trying to convert people to lose their identities and adopt a sentry belief or system in order to fit their “GOOD FAITH” principles.
- Modern slavery cases are quite often complex and evidence may not be available until a later time, quite often the victim may recall information years after and suffering Dissociation Disorder may result in blocks in their memory. Many people take years to recall parts of their experience as memories are not linear due to trauma.

Introducing an expanded ‘one-stop’ process to ensure that asylum claims, human rights claims, referrals as a potential victim of modern slavery and any other protection matters are made and considered together, ahead of any appeal hearing. This would require people and their representatives to present their case honestly and comprehensively – setting out full details and evidence to the Home Office and not adding more claims later which could have been made at the start.

- The idea of “One stop notice” is like digging a grave and bearing the applicants alive. In our experience the HO has always messed up people's cases. The “one stop notice” idea is implying that the applicants can't fight that correction is being made towards their cases.
- To get medical evidence from counselling, doctors, therapies and mental health will take years to get. So this “one stop notice” is setting up people to fail.
- If a survivor has **not** been referred to the NRM after claiming asylum because the interviewer did not identify that the survivor is a potential victim of human trafficking because of their lack knowledge / skills and awareness of not referring them, why do survivors have to suffer for this?
- This would require improvement to First responders and a lack of indicators may prevent referral to the NRM these indicators may present at a later date.
- If someone is brought here under the pretence of work/study you may not even know the term asylum due to language and lack of knowledge
- The UK government should be up front that they don't want migrants in their country, instead of wasting taxpayers money, also before they say that they should take their hands off Africans resources.
- Putting both trafficking and asylum claims under one stop shows how the government is trying to cut funds so the system is harder for those who are seeking help in the UK. Also because of cutting down funds we have seen a lack of staff who are working to support those seeking help and we see in this new plan will hold back solicitors as well on what case to take on and what not to take on.
- This may increase discrimination if people are being placed under the same umbrella, there may be confusion and break downs in communication, one person cannot have enough knowledge to transfer across multiple cases There could be accusations of inconsistency as victims recall their journey in a non-linear way. The officers could be focussed on looking for flaws in the person's claim instead of focusing on indicators of trafficking. This is the

opposite of a person-centred approach and is lumping everyone together regardless of their background could this affect data recording by lumping everyone together.

- Having one stop both NRM and asylum is a conflict of interest.
- How would the “one stop notice” work for those who are in detention centres, given they don’t have adequate or alternative forms of support?

Considering introducing a ground of appeal to the First Tier Tribunal for certain Modern Slavery cases within the ‘one-stop’ process.

- This is conflating modern slavery with immigration and is it fast tracking deportation to prevent NRM claims. some cases have taken multiple appeals.
- Putting in place “one stop notice” which has a time period restriction that can further put victims into more depression and vulnerability, susceptible to exploitation, poor representation. Considering the time frame legal aid approver is normally unpredictable.
- This “one stop notice” will further fuel exploitation

Providing more generous access to advice, including legal advice, to support people to raise issues, provide evidence as early as possible and avoid last minute claims.

- Providing evidence as early as possible is the problem and it’s not realistic. People fleeing from war zones and going through trauma can not get evidence asap.
- Evidence may not be available until later This is too vague, what exactly is legal advice, is that policing? Is that independent? Is that a lawyer or an advocate? What if the legal advice is inadequate and you need to find alternatives which can take time, takes no consideration for trauma and that the victim may not be in a good enough state to find /produce evidence or even go through any sort of legal process.

Introducing a new fast-track appeal process. This will be for cases that are deemed to be manifestly unfounded or new claims, made late. This will include late referrals for modern slavery insofar as they prevent removal or deportation.

- This takes no consideration for the persons' mental or physical health that could have resulted in a late claim or ill advice provided to them, fast tracking may result in poor collation of evidence and adequate support during the appeal process
- There has been failure to listen to victims or people when they point out that their cases is link to trafficking or exploitation, only after they have gone very far in their case only then is pointed out that they are potential victims of human trafficking.
- Some victims can not provide evidence because their evidence is their presence, it's their body. The HO should also act in good faith when asking victims of rape to bring evidence after few years of the rape incident happening.

Individuals seeking the protection of the UK Government should bring their claims as soon as possible. Individuals seeking the protection of the UK Government should always tell the truth

- What about people that are fearful of the police and authorities, those that have been wrongly criminalised, those that suffer with poor mental health, CPTSD, DID etc? The only people that could theoretically disclose immediately are people making false claims as their story will have been pre-scripted. Also those that have been trafficked take many years even to realise that they have been victims of trafficking, some victims may have been completely brainwashed by their traffickers. Some struggle with language barriers and the terminology used and may not understand the urgency to disclose.
- Some victims are trafficked by their families or those close to them so it is hard to tell or respond to them.
- We do not agree with the fast track process along with the one stop notice because people should be giving a reasonable time frame.

Failure to act in good faith should be a factor that counts against the individual, when considered by the

Home Office or judges as part of their decision making

- What would be put in place to know if people are lying? If the Home Office can believe me when I say I come from a particular country without you seeing my passport and why would they disbelieve the rest of my story? Are they going to pick and choose? That sounds like disclination.
- Victims need time to build trust with authorities and understand what has happened, they may have been criminalised or told what to say and brainwashed by their trafficker. They need time to come to terms with their ordeal and to process their trauma. There could be language barriers and breakdowns in communication. If there is a lack of evidence then how can the victim be accused of failing to act in good faith, many cases are so horrific that they may be difficult to believe but that does not mean that the victim is lying.

Where an individual has not acted in good faith, this will be a relevant and important factor which decision Makers and judges should take into account when determining the credibility of the claimant.

- This is the same as the previous question, judges should consider the effect of trauma instead of being accusatory.
- Language and communication barriers may result in confusion, for example prostitution, sex work, exploitation are arguably the same but mean different things to different people
- Language and communication barriers may result in confusion, for example prostitution, sex work, exploitation are arguably the same but mean different things to different people
- If the victim thinks they are being accused of not acting in good faith they may become fearful and seem very defensive and would require support for their mental health
- The victim may experience discrimination based on their back ground, victims should be protected

- Men that were victims of sex trafficking may feel too ashamed to open up about their experience. Does this mean they are not acting in good faith.

Q.29 The Government proposes an amended 'one-stop process' for all protection claimants. This means supporting individuals to present all protection-related issues at the start of the process. The objective of this process is to avoid sequential and last-minute claims being made, resulting in quicker and more effective decision making for claimants.

Are there other measures not set out in the proposals for a 'one-stop process' that the Government could take to speed up the immigration and asylum appeals process, while upholding access to justice? Please give data (where applicable) and detailed reasons.

- This question is too vague, surely all protection related issues cannot be met by one case worker and fails to address the individual needs of the victim
- It also does not acknowledge that victims need time to disclose their abuse and also to collate their evidence
- Putting a cap on legal aid will push a lot of vulnerable people to source for money in different ways and this can be working underground, working less for cheap labour and this will result in exploitation. With this plan the government will be fuelling and promoting black market that exploits people. People will want to raise money to be able to pay to get a lawyer to help their cases so if there is a further funding cut in legal aid.
- Fast tracking may make the victim feel vulnerable and in distress due to having not built trust or being adequately supported, they may be fearful of legal costs which could result in them being re-exploited

ATMG RESPONSE TO CHAPTER 5:

The statements in question 28 suggest that those claiming asylum and or fleeing persecution or who are victims of trafficking purposefully frustrate the judicial process. However, this is not the understanding of the ATMG. NRM decision making has consistently exceeded the 45 day target set out in the NRM, and this has been on-going now for a number of years.

The government's proposals towards an amended 'one-stop process' are extremely concerning given:

- Victim identification of modern slavery is not an immigration function.
- They will undermine previous reforms undertaken in light of the Government's own review.
- They will increase the likelihood of discrimination between certain groups of trafficking survivors
- They will lead to unjust decisions which do not account for the impact trauma has on the ability of survivors to engage.

In response to the proposal of a 'one-stop-process' it is important to set out and consider the UK's efforts to combat trafficking in human beings. The UK government signed up to (ECAT) on 23 March 2007. It was ratified on 17 December 2008 and came into force on 1 April 2009. This prompted the creation of the NRM, a victim identification and support process which is intended to help the UK meet its obligations under ECAT. The NRM was introduced by way of non-statutory guidance, rather than through legislation. The system is now set out in the Secretary of State's 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 Version 2.1.⁴⁸

In 2009 there were two designated Competent Authorities: the Home Office division responsible for visas and immigration (to which non-EU/EEA nationals were referred), and the UK Human Trafficking Centre (UKHTC) within the National Crime Agency (to which British/EU/EEA nationals were referred). From the outset, the NRM suffered from a number of serious problems and limitations. In February 2014, ATMG published a five-year review of the NRM.⁴⁹

The 2014 Review was submitted as evidence to the Joint Committee on the Modern Slavery Bill. It was based on research which identified a number of serious problems in the system. In particular, it concluded that based on publicly available data

⁴⁸ Home Office, 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 Version 2.1 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/974794/Marc_h_2021_-_Modern_Slavery_Statutory_Guidance_EW_Non-Statutory_Guidance_SNI_v2.1_.pdf

⁴⁹ ATMG, The National Referral Mechanism: A Five Year Review (February 2014).

between 2011 - 2012 there was a serious disparity in the percentage of positive Conclusive Grounds decisions made for British and EU/EEA nationals by the UK Human Trafficking Centre (80%) and the Home Office (less than 20%). It identified a 'culture of disbelief' in Home Office decision-making processes, by reference to further data showing disparities of outcome by reference to the nationality of children, and written reasons provided by the Home Office in trafficking cases.

In April 2014 the Home Secretary commissioned a review of the NRM, led by Jeremy Oppenheim, a senior civil servant. The final report known as the 'Oppenheim Review' was published in November 2014.⁵⁰ It recorded: *'concerns over the conflation of human trafficking decisions with asylum decisions, elongated timeframes for decisions, lack of shared responsibility and provision of relevant information for decision-making, [and] the complexity of the system and thresholds for decision-making.'* Following recommendations from the Government's own Pilot Evaluation,⁵¹ it was announced on October 2017⁵² that a single, expert unit to be created completely separate from the immigration system would be formed to undertake the NRM decision making function. This new Single Competent Authority (SCA) sits within the Home Office Serious and Organised Crime Directorate and outside of UK Visas & Immigration (UKVI) and the UKHTC subsequently renamed the Modern Slavery Human Trafficking Unit (MSHTU). This reform was undertaken in recognition of the demonstrated discriminatory decision-making which results in the conflation of trafficking decisions within the wider immigration decision framework.

Regarding the proposal to 'introduce 'a ground of appeal to the First Tier Tribunal for certain Modern Slavery cases within the 'one-stop' process', it is not clear, based on the information provided by the SSHD how this will work in practice and continue to maintain the separation between the Single Competent Authority and UKVI. As set out above the work done in recent years to advance the separation between decision making for victims and immigration matters will return the UK to a two-tier system for some potential victims and return to the discrimination faced by foreign national victims in historical models.

If the proposal to introduce a ground of appeal to the First Tier Tribunal for certain Modern Slavery cases, is insofar as they prevent removal or deportation, we are opposed to this. In cases of children, this will likely affect survivors of child trafficking

⁵⁰ Home Office, *Review of the National Referral Mechanism for victims of human trafficking* (November 2014).

⁵¹ Home Office, *An evaluation of the National Referral Mechanism pilot*, Research Report 94 (October 2017).

⁵² <https://www.gov.uk/government/news/modern-slavery-taskforce-agrees-new-measures-to-support-victims>

transitioning into adulthood with a precarious immigration status. In 2017, the House of Commons Work and Pensions Committee concluded that ‘treating confirmed victims of modern slavery differently depending on their nationality has created a confusing landscape that is poorly understood by professions or victims themselves’, meaning that ‘some victims face destitution or even a return to their enslavers because they have no ongoing access to support.’⁵³

In relation to children we are also concerned that the Government appears to be turning its back on devolved decision making for children, a scheme it is currently in the process of piloting across the UK. The pilot recognises that a multi-agency decision making approach is often in line with the best interests of a child, we are therefore confused as to how this proposal would satisfy a child’s rights based approach to decision making for child victims of trafficking.

Under these proposals, people will be required to raise modern slavery claims amongst claims for protection or matters all together, or ‘in one go at the start of the process’ with judges expected to give ‘minimal weight to evidence that a person brings after they have been through the one-stop-process, unless there is a good reason.’ The Modern Slavery Statutory Guidance⁵⁴ recognises that trauma impacts on a person’s ability to disclose trauma. Child trafficking and exploitation is a form of child abuse, and survivors of this form of abuse may be incapable of disclosing their experiences, even in adulthood.⁵⁵ Additionally, the ability to engage with processes may be hampered by symptoms of depression, anxiety and post-traumatic stress disorder common for child trafficking survivors.⁵⁶ Victims need time and a sense of safety before they can begin to disclose their experiences.⁵⁷ In light of the impact this proposal will have we ask for the withdrawal of modern slavery consideration amongst the ‘one stop process’.

⁵³ House of Commons Work and Pensions Committee. (2017). Victims of modern slavery. Available at: <https://publications.parliament.uk/pa/cm201617/cmselect/cmworpen/803/803.pdf>

⁵⁴ Home Office, 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 Version 2.1 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/974794/March_2021_-_Modern_Slavery_Statutory_Guidance_EW_Non-Statutory_Guidance_SNI_v2.1_.pdf

⁵⁵ J.J. Pearce, P. Hynes and S. Bovarnick (2009) Breaking the wall of silence: practitioners’ responses to trafficked children and young people. Available at: http://www.nspcc.org.uk/Inform/research/findings/breaking_the_wall_of_silence_report_wdf66135.pdf

⁵⁶ see, for example, United Kingdom: Asylum and Immigration Tribunal / Immigration Appellate Authority, Immigration Appellate Authority (UK): Asylum Gender Guidelines, 1 November 2000, available at: <https://www.refworld.org/docid/3ae6b3414.html>

⁵⁷ See, for example, D. Bögner, J. Herlighy and C. Brewin, “Impact of sexual violence on disclosure during Home Office interviews”. British Journal of Psychiatry (2007) 191, [pp.75-81](#).

TARA explain in their consultation response how their substantial experience, developed over 16 years, of providing specialist support to vulnerable female survivors of human trafficking means that they are acutely concerned with the impact of the proposals on women. In particular, the expectation that they will be able to make an immediate and full disclosure despite their lived experiences of trafficking. Women who TARA have supported have many shared experiences including complex and sustained trauma, language barriers, gender inequality, lived experience of patriarchal cultures, cultural stigma, corruption and violence from others including government officials, previous experience of being disbelieved and fear of consequences from traffickers or those perceived to have control and authority.

As TARA point out, the internationally accepted purpose of a recovery/reflection period for presumed victims of trafficking, as explained within the Council of Europe's Convention on Action Against Trafficking in Human Beings (ECAT) explanatory notes for Article 13, recognises the challenges as highlighted above. The ECAT requirement for a reflection period to enable 'victims to recover and **escape the influence of traffickers**' does not appear to have been considered within the proposals as evidenced by the suggested requirement for almost immediate and full disclosure of protection needs. It is well accepted that in order to encourage trauma informed disclosures a period of safety and support is required, which is focussed on establishing safety, trust and engagement in order to better enable vulnerable victims to disclose their full experiences safely. Again, Article 13 explanatory notes state 'the period is likely to make the victim a better witness: statements from victims wishing to give evidence to the authorities may well be unreliable if they are still in a state of shock from their ordeal.' TARA highlight that since 2016 the Scottish Government has supported ongoing work to ensure Scotland has a trauma informed workforce better able to respond to the needs of vulnerable people and recognises where people are affected by trauma and adversity, responds in ways that prevent further harm, supports recovery and can address inequalities and improve life chances:

<https://www.nes.scot.nhs.uk/our-work/trauma-national-trauma-training-programme/>

The proposals for almost immediate and full disclosures do not reflect this greater understanding on the impact of trauma and the need for systems to be revised and

reviewed in order to better protect and support vulnerable groups, including potential victims of trafficking.

If the intention behind the proposal to provide more 'generous access to advice, including legal advice' concerns individuals who are at risk of immediate removal from the UK, we would welcome this proposal. However, ATMG must stress that in order to uphold procedural fairness in obtaining legal advice, the advice must be independent and free at the point of need. It is not clear how or in what way individuals will be prioritised to receive this advice. As part of this proposal we recommend that the facilitation of legal advice is done in wider consultation with the migrant, legal and broader charity sector as well as people with lived experience. Independent legal advice and other support should not be limited specific stages of an individual's claim. The Government must recognise that the scope of legal advice must be broad, as many people who might raise a late claim might not have ever received legal advice previously. Individuals must be able to seek advice on all matters relating to their removal. If there is a commitment to set a fixed number of hours for advice, we believe this must be further consulted on with immigration practitioners and the legal aid agency.

For victims of trafficking, we believe all potential victims of trafficking and modern slavery must be provided with legal advice prior to entering the NRM. As highlighted earlier, many victims of exploitation are not identified as potential victims of modern slavery or human trafficking until they have been in the wider immigration system for some time. Often, this can be at the point of removal. As part of it's considerations for remove, the Government should ensure potential victims of modern slavery have access to legal advice in addition to other substantive immigration advice, and this must be prior to entering the NRM. For those not under immigration control, pre-NRM legal advice must also be available and this should not be subject to the income or savings tests currently set out by the Ministry of Justice.

Q.30 Please use the space below to give further feedback on the proposals in chapter 5. In particular, the Government is keen to understand:

(a) If there are any ways in which these proposals could be improved to make sure the asylum and appeals system is faster, fairer, and concludes cases more effectively;

(b) Whether there are any potential challenges that you can foresee in the approach the Government are taking around streamlining appeals.

Chapter 6

Q.31 The Government believes there is a need to act now to build a resilient system which identifies victims of modern slavery as quickly as possible, and ensures that support is provided to those who need it, distinguishing effectively between genuine and vexatious accounts of modern slavery.

In your view, how effective, if at all, will each of the following intended reforms be in achieving these aims?

1. Improving First Responders' understanding of when to make a referral into the National Referral Mechanism (NRM) and when alternative support services may be more appropriate

Not at all effective

2. Clarifying the Reasonable Grounds threshold.

Not at all effective

3. Clarifying the definition of "public order" to enable the UK to withhold protections afforded by the NRM where there is a link to serious criminality or risk to UK national security

Not at all effective

4. Legislating to clarify the basis on which confirmed victims of modern slavery may be eligible for a grant of temporary, modern slavery specific, leave to remain

Don't Know

5. Bringing forward other future legislation to clarify international obligations to victims in UK law

Not at all effective

6. Continuing to strengthen the criminal justice system response to modern slavery, providing additional funding to increase prosecutions and build policing capability to investigate and respond to organised crime

Don't Know

7. Introducing new initiatives (as set out in Chapter 6 of the New Plan for Immigration) to provide additional support to victims, improve the Government's ability to prevent modern slavery in the first place, and increase prosecutions of perpetrators.

Don't Know

Q.32 Please use the space below to give further feedback on the proposals in chapter 6. In particular, the Government is keen to understand:

(a) If there are any ways in which these proposals could be improved to make sure the objective of building a resilient system which accurately identifies possible victims of modern slavery as quickly as possible and ensures that support is provided to genuine victims who need it is achieved; and

(b) Whether there are any potential challenges that you can foresee in the approach the Government are taking around modern slavery.

Please provide as much detail as you can.

As part of this submission, ATMG has also worked with members of Survivor Alliance⁵⁸ who submit the following response to Chapter 6:

Improving First Responders' understanding of when to make a referral into the National Referral Mechanism (NRM) and when alternative support services may be more appropriate

- First Responders are not adequately equipped with the skills they need to identify a victim of modern slavery. Firstly they are not paid therefore they will enforce less effort.

Clarifying the Reasonable Grounds threshold.

- **Not at all effective**

Clarifying the definition of "public order" to enable the UK to withhold protections afforded by the NRM where there is a link to serious criminality or risk to UK national security

⁵⁸ Ibid, 47.

- Most victims who are in NRM will be forced to undergo shaming interrogation just because they want to clarify if the person is a criminal or a risk to the UK national security. Knowing that these victims have been coerced by their traffickers to engage in these criminals activities.
- This will allow the HO to play the judge without a fair trial, shaming victims who didn't have the willpower to say no when they are force by their traffickers

Legislating to clarify the basis on which confirmed victims of modern slavery may be eligible for a grant of temporary, modern slavery specific, leave to remain

- **Don't Know**

Bringing forward other future legislation to clarify international obligations to victims in UK law

- This should not be done by the Home Office because it will be subject to manipulation by the HO.

Continuing to strengthen the criminal justice system response to modern slavery, providing additional funding to increase prosecutions and build policing capability to investigate and respond to organised crime

- Over the years survivors have been abandoned, neglected by the police and left in the hands of the Home Office who continue to re-traumatize victims after reporting their trafficking cases.
- After taking the traffickers to court or in prison, victims are left with no protection and support knowing that the trafficker families or gang members will be coming to hunt the victims.

Q.32 Please use the space below to give further feedback on the proposals in chapter 6. In particular, the Government is keen to understand:

(a) If there are any ways in which these proposals could be improved to make sure the objective of building a resilient system which accurately identifies possible victims of modern slavery as quickly as possible and ensures that support is provided to genuine victims who need it is achieved; and

(b) Whether there are any potential challenges that you can foresee in the approach the Government are taking around modern slavery.

Please provide as much detail as you can.

- There is nothing about translator
- LGBTQ+ community
- Children
- People with disability
- Housing to be more suitable
- Financial support
- Education
- Right to work

ATMG RESPONSE TO CHAPTER 6:

We question the framing of this question which prioritises distinguishing between genuine and vexatious accounts of modern slavery. We would question that this should be seen as a priority for reforms. We are not aware of evidence that this people coming forward with 'vexatious accounts' of slavery is an issue. We would like to understand the justification and evidence base for these claims, noting the associated risks of further alienating victims who do not come forward for fear that they will not be believed.

Our experience instead is that many victims do not self identify as trafficked. Of those who are identified the issue is anyway that many people either do not come forward or do not consent to referral into the modern slavery systems via the NRM because they cannot see how to do so would be in their best interest. This is due to fears about the involvement of immigration services, being unable to work in the NRM, the delays, uncertainty around what support is available, relocation away from any existing support networks and the lack of outcomes from the NRM in terms of immigration status. This often means victims are choosing not to seek justice for the crimes committed against them and are often forced back into dangerous situations that increase the risks of exploitation. There are additional issues such as a lack of

access to non statutory First Responders and a lack of pre NRM advice and support to inform consent which we will address later in this response.

In relation to First Responders more generally, it is not possible to answer this question without practical detail around who the proposed First Responders are, how First Responders will be recruited and funded, the resources, including interpreters and specialist legal advice, available in order to support First Responders' work to gain trust and secure informed consent, and what alternative support services may be more appropriate. Evidently the immigration context and its impact on peoples' ability to access support will also have an impact. This is also the view of the Independent Anti-Slavery Commissioner:
'better identification requires improved training, clearer guidance and professional curiosity from police officers, lawyers and the judiciary.'⁵⁹

If the proposal on First Responders is in fact for them to assess 'credibility' on a range of 'objective' factors, we would be strongly opposed to this as it sets the bar inappropriately high, and places a burden on first responders to become legal experts in judging what is objective. Increasing the initial decision threshold would be a disaster for victims, and would shut out those most at need – including those who don't self-identify as trafficked, are not familiar with the language of slavery and trafficking, and have been so controlled that they feel indebted or grateful to their exploiter. [The Vita health network](#) has explained how psychological trauma causes profound disturbances to normal brain function and memory, including memory loss and inconsistencies in their stories or experiences. This means there is a significant risk of victims being dismissed as not credible, simply because their trauma has been so significant that they cannot recall information about key events. We need to make sure people can enter the system, which is why the initial identification threshold must stay low so that people can access the security they need to be able to talk about their experiences.

Overall, ATMG finds the proposal confusing and unclear. Although we would support the professionalisation of the role of First Responders including proper funding and training to support them in identifying victims, the absence of details of the content or the agencies which will benefit (the proposals refer to First Responders working across the immigration system but no specific department or

⁵⁹<http://www.antislaverycommissioner.co.uk/media/1478/the-modern-slavery-act-2015-statutory-defence-call-for-evidence.pdf> page 7.

role) it is challenging to provide a robust view. Given the stated goal is 'to quickly identify genuine victims and to assess whether an account of modern slavery is credible' there is significant concern this implies the introduction of a credibility assessment by First Responders prior to referral into the NRM.

For children, we believe this proposal will have serious implications and undermine efforts to identify trafficked children. As ECPAT points out, disclosure can be extremely complex for victims, particularly children and young people. Research examining issues of disclosure and the identification of trafficked children⁶⁰ found that fear and control pose major barriers to disclosure and serve as an effective means used by traffickers to control children. Further, it found that children may not be able to recognise or speak about their exploitation as it may have become normalised and part of their sense of identity and self-esteem.

Given the known barriers and the complexity of disclosure, it would further hinder identification if First Responders, likely coming across the child very briefly, were also tasked to undertake a credibility assessment. First Responders do not currently have the skills to recognise trafficking and many are unaware of the NRM process entirely.⁶¹ We believe that the ability to screen and check claims that are potentially false are already in place.

The framing of the question around the reasonable grounds threshold is unclear and potentially misleading. To 'clarify' something is inevitably seen as good as clarity and information is of course always useful. However we strongly oppose any increase to the Reasonable Grounds threshold which is what we understand is what is actually being proposed. The Reasonable Grounds threshold at 'suspect but cannot prove' is already clear. This is an appropriate threshold for ensuring that people can enter the identification system at which point evidence can begin to be collected. It is not realistic or reasonable to expect a higher threshold at the point of initial identification and access to support and could have the very dangerous consequence of shutting people out of the system, driving them back to exploitation.

⁶⁰ J.J. Pearce, P. Hynes and S. Bovarnick (2009) Breaking the wall of silence: practitioners' responses to trafficked children and young people. Available at:

http://www.nspcc.org.uk/Inform/research/findings/breaking_the_wall_of_silence_report_wdf66135.pdf

⁶¹ ECPAT UK (2017) *Time to Transform*. Available at:

<https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=cdb8012-7267-41ee-ad51-1569beddb095>

It is important to highlight that the current thresholds for reasonable grounds decisions as set out in Article 10 and 13 of ECTA are purposefully low. The EU Directive at Article 11(2) also confirmed that Member States shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a **reasonable-grounds indication** for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3. While we discuss the potential impact of such a proposal in other parts of the UK further on in this submission we are highly concerned at the proposal to deviate from the UK's international obligations.

The Explanatory Report to ECAT recognises the clear reasoning for this threshold stating in paragraph 131:

“Even though the identification process is not completed, as soon as competent authorities consider that there are reasonable grounds to believe that the person is a victim, they will not remove the person from the territory of the receiving State. Identifying a trafficking victim is a process which takes time. It may require an exchange of information with other countries or Parties or with victim-support organisations, and this may well lengthen the identification process. Many victims, however, are illegally present in the country where they are being exploited. Paragraph 2 [Article 10] seeks to avoid their being immediately removed from the country before they can be identified as victims. Chapter III of the Convention secures various rights to people who are victims of trafficking in human beings. Those rights would be purely theoretical and illusory if such people were removed from the country before identification as victims was possible.”

Additionally, the UN Commentary on the EU Directive states:

*“Though the UN Trafficking Protocol [Palermo Protocol] does not make a specific reference to the issue of protection outside the realm of criminal justice, the body established to make recommendations on the effective implementation of the Protocol has affirmed that “States parties should ... **[e]nsure victims are provided with immediate support and protection, irrespective of their involvement in the criminal justice process.”***

Immediate support and protection is a necessity and has been repeatedly established in case law from the European Convention on Human Rights. Cases such as *Rantsev* important principles on the human rights elements of trafficking in human beings. *Rantsev* provides important context when considering the extent of states' obligations to victims of trafficking under Article 4 of the ECHR (prohibition of slavery, servitude and forced labour). Here, the court held that a state might be

obliged to go further than merely enacting legislation in order to meet its obligations under Article 4 ECHR. This is particularly the case where ‘the state authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being trafficked or exploited (...) In case of an answer in the affirmative, there will be a violation of Article 4 of the Convention where the authorities fail to take appropriate measures within the scope of their powers to remove the individual from that situation or risk’ (Rantsev, para. 286).⁶² This means that states have positive obligations to prevent trafficking in human beings and to afford protection to persons who are victims of trafficking or might be at risk of becoming victims.

Rantsev and other cases define the obligations of the state clearly and demonstrate that they arise prior to a determination of a reasonable grounds decision. In conclusion, at its heart the NRM is a safeguarding mechanism. Principally, it exists to assess risk and allow someone who has been identified as potentially enslaved or trafficked to receive support so their exploitation can be investigated.

In relation to public order grounds, ECAT sets out a clear proportionality clause in article 13: ‘the Parties are not bound to observe this period if grounds of public order prevent it or if it is found that victim status is being claimed improperly.’⁶³ Rightly, this provides member states a broad mandate to consider and interpret the possible reasons for public order grounds and the possibility that crime may have been committed as a result of exploitation. Prior to the Modern Slavery Act Guidance 2015, the Government had not legislated or offered guidance on public order grounds, and currently form the public order definition is vague and broad which enable the circumstances of each case to be considered fully. Proposals to clarify the definition of “public order” are impractical, particularly with the data that the government has released in relation to FNO seeking entry into the NRM (see earlier response). As highlighted, these figures are extremely low and contain no information about the seriousness of crimes committed or how many of these are historical convictions.

Drafting a definition to public grounds exemption, the context of which we believe is focused on ‘serious criminality and or ‘risks to national security’ with the aim of

⁶²https://ec.europa.eu/anti-trafficking/legislation-and-case-law-case-law/rantsev-v-cyprus-and-russia-application-no-2596504_en

⁶³ <https://rm.coe.int/168008371d>

blocking those exempted from being granted a recovery and reflection period within the NRM. For children, these proposals will narrow access to identification of children. It also severely impacts the ability of particular survivors of child trafficking including those exploited for criminality or who have been exploited by para-military, non-state armed groups.

Proposals to specifically define public order grounds where there is 'a prison sentence of 12 months or more' fails to take into account any view of proportionality in relation to the offence committed. A definition based solely on the length of a custodial sentence fails to take into account the often complex nature and causes behind offending. As ECPAT note, there are many offences commonly committed by victims of trafficking, particularly children, who in the absence of identification⁶⁴ may not benefit from the protections of the non-punishment provision nor the statutory defences in primary legislation in Northern Ireland, England and Wales.

Changes to the type of exploitation recorded in the NRM statistics demonstrate the acceptance that there is a high level of criminal exploitation in children.⁶⁵ The Modern Slavery Act Statutory Guidance states that in the specific cases of children regarding criminality, '*In cases involving children, criminal activity may appear not to have been forced but decision-makers should bear in mind that children cannot give informed consent to engage in criminal or other exploitative activity, and they cannot give consent to be abused or trafficked.* Many of these cases are for drug related offences, including 'county lines' which can carry a custodial sentence of over 12 months. For example, the Sentencing Guidelines Council's guidance for Drugs Offences⁶⁶ classifies cannabis cultivation as an 'either way' offence meaning sentences can vary from six months to 16 years.

As per ECPAT's submission we would like to highlight that research findings show professionals reported that many children come to the attention of statutory agencies when exploitation is already present in their lives and criminal groups are controlling them to deliver drugs, with professionals reporting that law enforcement

⁶⁴ Villacampa, C., Torres, N. Human Trafficking for Criminal Exploitation: The Failure to Identify Victims. Eur J Crim Policy Res 23, 393–408 (2017). <https://doi.org/10.1007/s10610-017-9343-4>

⁶⁵ Changes introduced to recording procedure of exploitation types in the NRM, from 1 October 2019

⁶⁶ Sentencing Council. (2021). Production of a controlled drug/ Cultivation of cannabis plant. Available at: <https://www.sentencingcouncil.org.uk/offences/crown-court/item/production-of-a-controlled-drug-cultivation-of-cannabis-plant-2/>

takes precedence over safeguarding responses.⁶⁷ Data on arrests of children aged 10 to 17 for drug related offences shows that more children are arrested for 'possession with intent to supply Class A drugs' with an increase of 13% from 2015/16 to 2017/18.⁶⁸ Given the significant overrepresentation of children amongst those exploited for criminality, this proposal will detrimentally impact the ability of children who have served over 12 months with a custodial sentence from accessing the victim identification procedure under the NRM.

ATMG have raised concerns on para-military and non-state armed groups who exploit children. These proposals include 'risks to national security' as grounds for preclusion for support. This risks failing children who are exploited in this way. By extension, it does not respect or oblige the international legal framework on the use of children in armed conflict, as defined in International Labour Organization (ILO) Convention No.182.

At this time, the Modern Slavery Act Statutory Guidance does not state how children exploited by armed groups fit within the criteria for consideration by decision makers under the NRM. Additional exclusion on public order grounds will significantly impact children to access support and protection.

In relation to children, ATMG urges the Government to consider children exempt on public order grounds and the exemption must not exclude access to the NRM for children trafficking survivors who are served with 12 months or more custodial sentences or those children that are recruited by non-state armed groups.

As previously stated, this proposal risks harming many victims of exploitation who have been forced to commit crimes as a result of their exploitation. If the Government introduces an extremely narrow definition this could delay reasonable grounds decisions significantly as it will take weeks or even months to determine previous convictions. Having exited the EU, and now the Schengen area, the UK is without access to SIS II or ECRIS. Falling back on Interpol, the UK is likely limited in its ability to gather information as to the previous convictions of a foreign national or the detail of the crime committed. This means many people will likely be in limbo, without support while they wait to see if they have reached the threshold of what will be an extremely narrow definition. We believe this is extremely unfair and fails

⁶⁷ The Children's Society. (2019) Counting Lives. Available at: <https://www.childrenssociety.org.uk/sites/default/files/2020-10/counting-lives-report.pdf>

⁶⁸ Ibid.

to take into account the complex nature of criminal exploitation or offences committed many years prior.

The points we have made above about the way this question is posed also apply here. Clarity of course is a good thing. There is anyway not enough transparency around the operation of the NRM. Again we object to the question being proposed in this leading way to suggest this is a major issue without an evidence base. In our experience the issue is that people in need of protections, who have been forced to commit crimes as part of their exploitation, or who have a history of criminality are shut out from support. This makes them perfect recruitment material for traffickers who know they have far less chance of receiving justice if they exploit people who will not be seen as credible victims. The protections in place to ensure that people can access identification and support systems despite any issues around forced criminality or past convictions are important and must not be reduced.

Finally, if the Government is committed to instigating a public order grounds exemption it should have an extremely high threshold and legal aid must be available for all advice pertaining to the order. All circumstances of each case must be thoroughly considered and the threshold cannot be limited to an arbitrary 12 month custodial sentence. An appeals process must also be enforced allowing for independent legal advice and representations to be made on the order.

In Chapter 6 of the Consultation guidance, there is a proposal that the government *“...will consult on seeking bilateral or multi-lateral agreements with safe, ECAT-signatory countries which would enable the removal of victims of modern slavery ensuring their needs are met in a country to which they are removed in line with our obligations under ECAT.”*

As per Hope For Justice’s submission, ATMG is deeply concerned that the “emphasis of this is on removal as opposed to compliance with ECAT, ECHR and the EU Directive, particularly obligations under Articles 12 and 13 of ECAT; Article 11 of the EU Directive and including but not limited to Articles 3 and 4 of the ECHR. Emphasis is on removal of victims as opposed to voluntary returns and supported repatriation for those who wish to return home. It should not be a usual or normal practice to remove victims from the UK which is forced return as opposed to voluntary returns at the request of the survivor and with appropriate objective

information, legal advice, risk assessments being conducted in line with the Slavery and Trafficking Survivor Care Standards.”

This proposal appears to be solely concerned with removal and we believe this threat will mean victims of modern slavery are less likely to come forward and seek support.

For children there is no mention or reference to the rights of children to decisions of repatriation. As repeatedly referenced in this submission, decisions on repatriation must only be made following a determination of their best interest as a primary consideration in line with domestic and international law.

We are pleased by the recognition that leave to remain is crucial to the recovery of many adult survivors, in line with the UK’s obligations as a signatory to ECAT. We would like to see the UK learn from the United States’ T visa, which understands the importance of sustainable freedom and belonging so includes a route to settlement and family reunification. However, the Home Office proposal is short on detail and practicality, and doesn’t explain how it differs from the current options around leave to remain for victims of modern slavery. We look forward to seeing more detail about this as soon as possible. It is well documented that unless the NRM is able to provide victims with security (including through leave to remain) the risk of coming forward and giving evidence will be too high for many, with the impact of people remaining in exploitation.

ATMG is clear that there must be the option for a grant of leave to remain for people who have been in exploitation to support recovery and rebuilding lives. This is already set out in guidance. Our concern is that so few grants of leave are made, even to confirmed victims of slavery. As set out on 4 January 2021 by the Independent Anti- Slavery Commissioner, speaking to Thompson Reuters Foundation:

"The latest guidance says that discretionary leave is automatically considered for all non-EEA survivors. But the overall number of survivors granted discretionary leave remains very low. In 2015, 123 survivors with positive conclusive grounds were granted discretionary leave, in 2019 it was 70 and in the first three months of this year it was only 8. From 1 January some EEA nationals will be similarly unsure about their future".

It is not clear how this proposal would differ from the current system, where grants of discretionary leave to remain are provided for under the guidance. The reference to 'long-term recovery needs linked to their modern slavery experience' sounds similar to the current policy around granting discretionary leave based on the 'personal circumstances' of a victim of trafficking. If so, we are very concerned by this as few grants of leave are currently granted on this basis. There is little incentive for victims with insecure immigration status to engage with the NRM. In doing so they expose themselves to increased risk of immigration detention and removal and to repercussions from their exploiters. This means, in contrast to unevidenced assertions in the Home Office plan for immigration of 'abuse of the system', that for many an NRM referral is high risk and could mean years of limbo and uncertainty followed by removal from the UK. Legislation which sets out entitlement for leave to remain for a minimum of 12 months or all confirmed victims of slavery would be welcomed as it would mean an opportunity for victims to begin to take stock, recover and rebuild their lives as opposed to the continued uncertainty which accompanies the majority of positive Conclusive Grounds decisions at present.

For children, we similarly welcome the commitment to fulfil the UK's obligations per ECAT however under these proposals it remains unclear what is intended for children. The references to leave being granted based on 'long-term recovery needs based on modern slavery experiences' or supporting police with their investigations is not a lawful threshold for child victims to access leave to remain.

Child victims of trafficking have rights to protection under international law. The United Nations Convention on the Rights of the Child (UNCRC) and the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) exist to ensure children can recover from exploitation and transition to adulthood in safety and stability. Article 14 of ECAT sets out how member states should issue renewable residence permits to victims when required such as owing to their personal situation, in order to pursue compensation and ongoing cooperation with law enforcement. The standard for children is clarified at Article 14 (2) which states that *'the residence permit for child victims, when legally necessary, shall be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions.'* The explanatory report to ECAT goes on to state at paragraph 186: *'In the case of children, the child's best interests take precedence over the above two requirements. The words "when legally necessary" have been*

introduced in order to take into account the fact that certain States do not require for children a residence permit.’

As per their submission, ECPAT UK requested data through the Freedom of Information Act on the immigration outcomes for those exploited as children, the response of which was published in our [Child Trafficking in the UK 2020: a snapshot](#). We requested a review of the data provided following irregularities and claims from the Government that the information was ‘misleading’⁶⁹ albeit it was their own data. The final data provided following this review shows that of the 5,054 decisions were made in relation to modern slavery discretionary leave to remain for people with positive Conclusive Grounds decisions between January 2016- March 2020. Of these 1645-2230⁷⁰ decisions related to those exploited as children out of which between 67 to 133 were grants of leave. This means that only about 5% of child-related considerations resulted in a positive decision. This data indicates that discretionary leave is not being granted to children as victims of trafficking and that in the small number of cases where it is, the average length of grant is short suggesting that decisions are not being taken with their best interests as a primary consideration and providing minimal stability.

With reference to continuing to strengthen the criminal justice system response to modern slavery, as above it is not possible to answer this question without knowing more about what is being proposed. Additional funding is welcomed but for policing to be effective it is vital that victim support systems are also in place. This needs to include security before, during and following the NRM process.

The best way to tackle slavery is by preventing it from happening in the first place. This involves understanding what makes people vulnerable to exploitation, and addressing the structural issues which stop people from challenging or reporting abuse. Reforms to the anti-slavery system need to offer people practical options to seek support. We agree with the Government that the current system needs reform – but we have grave concerns that proposals in the ‘New Plan for Immigration’ fall

⁶⁹ <https://parliamentlive.tv/event/index/3402318f-b1f7-4756-b6f1-f89170c3d120>
<https://hansard.parliament.uk/lords/2020-11-16/debates/4C80A4D6-AB77-4BD7-8C6D-966D796E639A/Debate>

⁷⁰ Although the overall total is available in the data, where values are less than five, they were replaced with <5 in order to preserve anonymity. In relation to the child totals, in order to allow for some variation as a result of the use of <5 in the tables, totals were calculated twice, first replacing all instances of <5 with 1 in order to provide a minimum total and then again by replacing <5 with 4 to provide a maximum total. This leads to the ranges presented.

short of what is needed, and will actually make things worse – driving exploited people underground, and handing additional tools to those who want to exploit them. We are especially worried about proposals as they relate to children and young people. As currently presented, the ‘New Plan for Immigration’ reflects poorly on the UK as a country that says it wants to tackle modern slavery.

Slavery comes in many forms. During the last decade the UK has significantly improved its understanding of slavery, moving away from stereotypes about victims and exploiters. More people now know that exploitation can take many forms, and that people in slavery may not self-identify as a victim; some might even feel loyalty or gratitude to their exploiters. The Home Office’s ‘New Plan for Immigration’ and the rhetoric surrounding it risks undermining much of this hard-won learning.

The very fact that the Government’s proposed changes to anti-slavery laws are set in an immigration policy document unhelpfully links migration and slavery when these issues need to be tackled on their individual merit. It also ignores the fact that the most common nationality of people referred into the [UK’s identification system in recent years have been British nationals](#), who would have had no immigration issues. It’s incredibly disappointing to see the Government muddle these issues: for people who may have been exploited and who also have immigration issues, this blurred approach can make them feel wary of coming forward for fear of having their data shared with immigration enforcement and ending up in immigration detention. This, of course, plays into exploiters’ agendas- enabling them to create vulnerability by making sure victims have (or believe they have) insecure immigration status. This is increasingly an issue following the UK’s departure from the EU, and because of the increase in restrictive visas such as the Seasonal Workers Visa – which has strong links to employers restricting workers’ options to challenge poor treatment.

The Home Office’s proposals use divisive language and make assertions that aren’t backed up with evidence. These include the claim that the UK’s ‘Modern Slavery System’ is ‘abused’. This is not something we recognise. Our experience is of survivors saying the existing systems do not work for them, compound their trauma and prevent them from recovering. Survivors’ voices must be heard in any attempt to reform the system, or they might continue to be discouraged to come forward.

Other mentions in the Home Office’s proposals of ‘genuine’ versus fraudulent victims risk further undermining trust, and dissuading people from coming forward

for fear they will be branded as liars who are trying to 'abuse' the system. If people who have a history of criminality, or who have been forced to commit a crime as part of their exploitation are blocked from identification and support, there is no doubt that these are the very people exploiters will target. For this reason, we are worried that the 'New Plan for Immigration' could actually lead to more exploitation, more victims and more suffering.

There is widespread agreement that the anti-slavery support system does need reform. For too long it has not served survivors' needs, and there is no clear pathway for survivors to rebuild their lives and move on from their experiences. In the UK we still have no solid information as to what happens to survivors who have been identified and gone through the system. This is why any reforms to the UK's modern slavery system must start by putting survivors' needs at the centre of policy decisions. Survivors are clear that they want the Government to understand the outcomes and shortcomings of the current system, and to adopt a brave, survivor-centred vision for reform. This must prioritise survivors' security, and support them to rebuild their lives. Instead, right now we do not even know who the Home Office consulted while developing its 'New Plan for Immigration', and its public consultation on the plan is limited and over a short time period. This is a lost opportunity to learn from experience in order to create an effective system that the UK can be proud of.

The proposals as set out are high-level, so it is not possible to comment on the detail or many of the practical implications as to how they will work – this is a poor way to conduct a public consultation.

Pending sight of any detail, we welcome the Government's commitment to review the Modern Slavery Strategy. Any review needs to build on the expertise of people with lived and professional experience, and must focus on prevention, protection and rebuilding lives. We also broadly welcome the commitment to improve training for First Responders, and to quicker decision making – as long as this is based on the system remaining fair and accessible for all potential victims of modern slavery, and not prejudiced against certain cases where individuals might also have insecure immigration status. This must be accompanied by funding and a recognition of the importance of the initial identification stage.

We welcome efforts to make sure resources are used more effectively for survivors, and a commitment to making sure the UK fulfils its ECAT obligations. However, we

think the Government's focus should be on tackling slavery's root causes so that people never need to access support, rather than making an ill-founded distinction between 'genuine' claimants and 'abusers of the system'. We need immigration, law enforcement and workplace inspection structures that enable people to challenge exploitation early on. This should be combined with actively promoting recovery and a move to independence from early on, including through [access to work](#) and education. Immigration detention is hugely costly and undermines recovery. Detention centres – prison-like settings – have been consistently proven to worsen trauma, physical and mental health, and are evidently not appropriate or compassionate places for victims to start to recover. In addition, the threat of immigration detention and being criminalised undoubtedly prevents many people from coming forward, trapping them in exploitation and seriously impairing their ability to seek justice and remedy for their experiences.

In relation to Scotland and Northern Ireland, ATMG believe there are issues in this chapter that are devolved to the competency of the Scottish Parliament and the Northern Ireland Executive. In Scotland, proposals identified in questions 31-37 are governed by the Human Trafficking and Exploitation (Scotland) Act 2015. Any changes to the legal framework or support provisions for victims of trafficking in Scotland must be in line and true to the principles as defined in the Act. It is important to note that these are broadly based on the UK's commitment to the Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT).

The TARA service in Scotland have highlighted in their consultation response their unease at the timing of this consultation. They point out that the consultation period has been run in its entirety during the Scottish Parliamentary pre election period, starting on the first day of parliamentary recess and concluding on the day of the Scottish Parliament election. This appears to reflect a lack of consideration of the obligations on Scottish Ministers via the Human Trafficking and Exploitation (Scot) Act 2015 and the Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT).

As JustRight Scotland make clear, 'the identification and protection of victims of human trafficking in the UK is not an immigration process. Yet the decision by the Home Office to present these proposals as part of a New Plan for Immigration – as well as the substance of some of the proposals – appear to conflate the two

issues'.⁷¹ The identification, protection and prevention are also questions that relate to the safeguarding of vulnerable people, child protection and other local authority safeguarding structures, criminal justice, specialist adult support as well as health and legal support for survivors. Every single one of these matters is a devolved issue.

Moreover, under these proposals, there is a danger that restrictive and hostile policies could impact on the ability of the Scottish and Northern Ireland Governments to continue their important work to date on areas of human rights. In Northern Ireland, the The Racial Equality Strategy³ makes clear that the Executive has powers in respect to immigration and is exercising them to address some of the problems faced by those living under immigration control in Northern Ireland, including asylum seekers and refugees. Indeed, it has exercised these powers to put in place several very positive initiatives including: setting up a Crisis Fund for vulnerable migrants, providing free English language classes for asylum seekers, ensuring that all asylum seekers have access to free healthcare, providing the legal framework that will give all unaccompanied children seeking asylum and trafficked children an independent legal guardian.

In Scotland, social work support to destitute families is provided under Section 22 of the Children (Scotland) Act 1995. JustRight Scotland have pointed out in their consultation response how the Plan includes a proposal to seek the agreement of local authorities to systematically exclude some children and families from the operation of Scots child welfare law. There is no evidence that this legal standard is not working from the perspective of ensuring child welfare and the human rights of the children and families involved – although it does create increasing pressure on local authority financial resources as Home Office policies push more and more people into destitution. Evidence published in September 2020 by the NRPF Network indicated that 77% of families supported by local authorities are eventually granted leave to remain in the UK; however the cost to local authorities is significant, with a quarter of such families requiring more than three years of support and a rise in referrals for local authority support due to the impact of “hostile environment” policies. This evidence suggests that the key issue for children, families and local authorities is inefficient and (where there are successful appeals) challengeable

⁷¹ <https://www.justrightscotland.org.uk/2021/04/new-plan-for-immigration-consultation-a-briefing-for-scottish-civil-society-organisations/>

Home Office decision-making – an issue that cannot be addressed by reforming how local authorities provide support. It is therefore unclear what this further proposal could seek to achieve, and we are concerned that its impact – in an area clearly devolved to the Scottish Parliament – is potentially unlawful.

JustRight Scotland have also explained in their consultation response how the identification and protection of female survivors of gender-based violence living in Scotland is a matter wholly devolved to the Scottish Parliament. The mechanisms of protection in Scotland include the criminal justice system and the local safeguarding and child protection frameworks operated by local authorities. It is important to recognise that in some cases the violent crime may be an ongoing matter in Scotland – for example, forced prostitution, forced marriage, rape and domestic abuse. JustRights Scotland have expressed concern that these proposals increase vulnerability and risks to women survivors of gender-based violence, both abroad and in Scotland. They are also concerned that these reforms will have the effect of increasing the complexity of casework and the cost of providing practical support to these women – and will, in a substantial number of cases, shift the burden of meeting our international commitments to protect and support victims of gender-based violence from the Home Office to Scottish local authorities and third sector organisations – at significant cost and without clear justification or evidence for any requirement for change.

Just Right Scotland explain in their submission how in Scotland, age assessments are conducted by local authority social workers to assess eligibility for support under the Children (Scotland) Act 1995. They are closely linked to obligations around the presumption of age of victims of human trafficking, set out in the Human Trafficking and Exploitation (Scotland) Act 2015. They are conducted in line with practice guidance issued by the Scottish Government in March 2018. The proposals recommend: requiring social worker age assessments to be made against Home Office criteria; forcing social workers to either complete age assessments or refer cases to a Home Office panel for age assessments to be carried out; using this Home Office panel as a review mechanism for social work assessments; and using unspecified “up to date scientific technology” in age assessments.

JustRight Scotland have explained they do not believe the Home Office can lawfully set standards for, or compel, Scottish local authorities to either complete age assessments against their professional opinions or refer age assessment cases to a

Home Office panel. As the Scottish Government practice guidance states, local authorities are conducting assessments to determine whether they have duties arising to children under Scots child welfare law, and often linked to their obligations to protect child victims of trafficking under Scottish human trafficking legislation. As regards the use of scientific technology, the British Society for Paediatric Endocrinology and Diabetes have stated that physical examination, bone age assessment and dental x-rays do not add anything to the existing process, having a margin of error between 2 and 4 years. More recently, the UN Committee on the Rights of the Child has found in a series of cases that Spain breached the rights of migrant children under the UN Convention on the Rights of the Child by relying on x-ray evidence in reaching a determination on age assessment. Just Right Scotland have emphasised that age assessment of children in Scotland is a matter firmly devolved to the Scottish Parliament, and that there is a process for age assessment of children in Scotland which is based on a holistic assessment by experienced social workers, with multi-agency input, and that there is no evidence or convincing argument that this approach is not working to identify and safeguard children in Scotland. They also express concern at any proposal that would supplant this approach with “up to date scientific technology” without robust evidence for any advantage gained, and express our concern that previous use of “objective” medical evidence in age assessment has been heavily criticised and rejected as variously unreliable, indeterminate, or in some cases, unethical.

The Scottish justice, courts and tribunals system lie within the devolved competence of the Scottish Parliament, and are entirely separate to the justice and courts system of England and Wales. Whilst the UK Government can make changes to how appeals are dealt with to and from the First-Tier and Upper-Tier Tribunals (Immigration and Asylum Chamber), any Judicial Reviews of Home Office decisions are to the Court of Session in Scotland – and the rules that govern those appeals are set out by the Court of Session Act 1988 and the Rules of the Court of Session 1994. The Plan includes proposals to amend how immigration Judicial Reviews are dealt with by the Court of Session. It is unclear whether, and how, the Home Office or the UK Ministry of Justice could propose to limit or change the right of Judicial Review, or amend the procedural rules for Judicial Review, in a legal action arising in Scotland before the Scottish Courts.

