



## **Detention Action Submission to the Home Affairs Committee inquiry into Modern Slavery**

September 2018

### **About Detention Action**

Detention Action is a national charity established in 1993 that defends the rights and improves the welfare of people in detention by combining support for individuals with campaigning for policy change. Detention Action works in Harmondsworth and Colnbrook Immigration Removal Centres (IRCs), near Heathrow Airport in London, Morton Hall IRC in Lincolnshire and with people held under immigration powers in London prisons.

### **For further information, please contact:**

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### **Introduction**

Detention Action welcomes the Home Affairs Committee inquiry into modern slavery. Through our work with clients detained in and around London, Detention Action has uncovered victims of trafficking and modern slavery being held indefinitely under immigration powers in prison like conditions rather than being provided with the support to which victims of this serious crime are entitled.

This is a systemic problem exacerbated by a system devoid of effective checks and balances to ensure that victims of trafficking and modern slavery are effectively identified, referred and diverted away from immigration detention.

This is a clear example of one way in which current levels of support for victims are inadequate and so we are pleased that the HASC has undertaken to inquiry into shortcomings in support.

Evidence for the basis of this submission comes from [a briefing](#) produced by Detention Action in November 2017.

### **Executive summary**

1. The UK is failing to support trafficking victims who continue to be held in immigration detention in violation of professed Government policy. The Government has legal obligations and a professed commitment to protect victims of trafficking, but this comes into conflict with its desire to implement an aggressive and poorly administered immigration control system.
2. Many victims of trafficking are detained for removal after being encountered during raids on brothels, nail bars and cannabis farms. Often, they are wrongly convicted of criminal offences relating to their exploitation.
3. Detention makes it difficult for people who have been trafficked to disclose their experiences; to access specialist, independent trafficking advice and representation; or to be correctly identified as victims and given specialist support in the community.
4. Evidence collected by Detention Action between December 2016 - June 2017, and from November 2017 – May 2018 indicates that structural factors appear to be denying the protection of the NRM to victims of trafficking in detention. The Home Office's conflict of



interest leads to poor quality NRM referrals and decision-making, and there are few effective safeguards for victims of trafficking who cannot access adequate advice, space or support to disclose their experiences.

### **Current levels of support for victims: indefinite detention and institutional indifference**

*Vietnamese men: December 2016 – June 2017*

5. Over six months from December 2016 to June 2017, Detention Action met 16 Vietnamese men detained in Colnbrook, Harmondsworth and The Verne IRCs with clear indicators of trafficking, out of a total of 19 Vietnamese men encountered during this time.
6. Seven had been convicted of cannabis cultivation, while others had been picked up by immigration officers while working in a cannabis farm or nail bar. Many described being physically or sexually assaulted by traffickers who brought them to the UK through Russia, China and France, or being forced to work long hours in poor conditions to pay off the debts they owed to their traffickers. Seven men (44%) had Rule 35(3) reports documenting evidence of the trauma experienced at the hands of their traffickers and had been recognised as 'adults at risk' under Home Office policy.
7. In addition to these indicators of trafficking, many of the men were marginalised or vulnerable for other reasons. 15 (94%) spoke little or no English, and 11 (69%) disclosed serious physical and mental health problems, including cancer, seizures, type 1 diabetes, tuberculosis, PTSD, anxiety, depression and suicidal ideation. During this six month period, none of the men were removed to Vietnam, despite seven (44%) being detained for six months or more and two (13%) for more than a year. Ten (63%) were released on bail or temporary admission. Aside from their rights as potential victims of trafficking, these figures beg the question of the purpose of detaining these men, particularly given that many were unwell and had been recognised as adults at risk by the Home Office.
8. Nine of the 16 men who described indicators of trafficking had to our knowledge been referred into the NRM. It is unclear why almost half were not referred into the NRM, despite clear indicators of trafficking and the widespread recognition of the exploitation of Vietnamese men. While victims of trafficking are entitled to make an informed decision not to be referred, many told us that they had never heard of 'trafficking' or the NRM before coming into contact with Detention Action.
9. Of the nine NRM referrals made, only two were given an initial positive reasonable grounds decision, an acceptance rate of just 22%. This figure is low compared to the 74-90% of NRM referrals that receive a positive reasonable grounds decision overall. Being detained under immigration powers appears to be associated with a much lower acceptance rate at the reasonable grounds stage.
10. All of the nine referrals were made by the Home Office, rather than a specialist NGO or other first responder. In detention, the Home Office also makes both the reasonable grounds decision and decisions on detention and immigration status, a potentially problematic conflict of interest.



11. The NRM therefore appears to be operating differently for people in detention. Although the sample is small, the fact that only two out of nine NRM referrals resulted in a positive reasonable grounds decision suggests that the same low threshold is not being applied for people in detention as for people in the community. Several other men in this sample with indicators of trafficking had not been referred into the NRM at all. While many victims of trafficking also go unidentified in the community, the fact that the Home Office is detaining them and examining their cases makes it harder to explain how indicators can be missed. This raises questions about the intersection of the government's detention and trafficking policies.
12. The detention of potential victims of trafficking undermines the Home Secretary's aim of 'getting immediate support' to victims of trafficking so that they can recover from their experience, tell their story clearly and cooperate with authorities to ensure the prosecution of their traffickers. It also undermines the aim of ensuring that people at risk of being harmed by detention are not detained. People in detention who have been trafficked are doubly disadvantaged: they are subject to the harmful impacts of detention and will also find it more difficult to get access to the support and recognition they need.
13. There are several stages at which the Home Office's policies and practices fail potential victims of trafficking who are detained. One relates to the decision to detain; another involves the lack of effective safeguards against the decision to maintain detention; a third arises because of the difficulty in accessing specialist trafficking advice and support in detention.

*Victims in detention: November 2017 to May 2018*

14. Further to the above data, Detention Action monitored the cases of 12 new clients with indicators of trafficking from November 2017 to May 2018.
15. Five (42%) of these clients were Vietnamese and the rest were from a wide range of countries: Somalia, Sierra Leone, Eritrea, Nigeria, Kosovo, Albania and Pakistan. Some were trafficked as children into sexual exploitation in their country of origin or the UK; others were trafficked into forced labour on their journey to the UK through Libya or Europe. All of these clients had indicators of vulnerability. All except one (92%) had a Rule 35(3) report and were recognised as Adults at Risk by the Home Office. 10 (84%) had been diagnosed with mental health problems including PTSD, schizophrenia, anxiety and depression, and described their daily struggles with insomnia, nightmares, flashbacks and self-harm in detention. Six (50%) spoke little or no English.
16. At least 9 (75%) of the 12 men who described indicators of trafficking had been referred into the NRM, either by the Home Office or the Salvation Army (or Migrant Help for one person picked up in Scotland). At least 5 (40%) of these people had received a positive reasonable grounds decision. Positive reasonable grounds decisions were more strongly correlated with referrals made by the Salvation Army, this could be because these tend to have been made at the request of and with assistance from an immigration solicitor. Two people with a positive reasonable grounds decision had been released from detention although in neither case was this a direct result of the reasonable grounds decision. One was released by the Home Office 17 months after being detained and receiving a positive reasonable grounds decision; the other was



released by the First Tier Tribunal on bail 6 weeks after receiving a positive reasonable grounds decision, after 8 months in detention.

17. None of the men we spoke to were removed during this time. Three were released by the Home Office (after 3, 16 and 17 months) and one on bail (after 8 months). In May 2018, 2 had been detained for approximately 2 months, one for 4 months, three for 5 months, one for 6 months and one for 8 months. Two have been detained on previous occasions, once for 2.5 years. This again raises questions about the purpose of detaining these men, all of whom had indicators of trafficking and vulnerabilities.
18. Although the rate of positive reasonable grounds decisions was higher in this sample (40%) than in the original sample of Vietnamese men (22%), this still falls well below the average of 74 – 90% of NRM referrals that receive a positive reasonable grounds decision, again suggesting that the same low threshold is not being applied for people in detention as for people in the community.
19. Further to this, those who did receive a positive reasonable grounds decision were not automatically released for their 45 day recovery and reflection period, showing a further disparity in the support offered to those in the community going through the NRM compared with people in immigration detention.

### **Systemic failure by the Home Office to support and identify victims**

20. The Home Office faces a conflict of interest between its responsibility to identify and protect victims of trafficking and its role in detaining and removing undocumented migrants. The prioritisation of these enforcement responsibilities leads potential victims of trafficking to be detained without careful assessment of their situations. Once in detention, the Home Office is primarily responsible for making NRM referrals and reasonable grounds decisions. The Home Office makes poor quality referrals to the NRM, which are refused, allowing it to continue to detain the person for removal.
21. The risk of failure to identify victims of trafficking in detention is exacerbated by the lack of effective procedural safeguards. Neither the NRM nor the Home Office's Guidance on Adults at Risk in Immigration Detention provides a clear and effective safeguard to ensure that potential victims of trafficking are identified and released from detention.
22. Indefinite detention causes harm and prevents effective access to the NRM by denying victims of trafficking a safe space where they can disclose their experiences and access independent advice. Detention impacts on physical and mental health and contributes to isolation and mistrust of authorities. Locked up in prison-like conditions, detained victims of trafficking lack access to independent specialist advice, support and representation.
23. These systemic factors cause the NRM to operate unfairly for people held in immigration detention. People in detention are denied access to an environment that is conducive to recovering from the trauma associated with trafficking or to building relationships with trusted advisors that allow them to fully disclose their experiences. With less opportunity to recover and speak out about their history of exploitation, it becomes more difficult for them to access advice and recognition, or to secure their release from detention. NRM referrals are generally made, if at all, by the same entity



that is responsible for detaining them and making a reasonable grounds decision. This gives the Home Office three distinct and conflicting roles which, along with the limited access to independent, specialist support, advice and referrals, compromises the fairness of the process.

**Recommendations to improve the support available to victims of trafficking:**

- 1. The screening process should be improved to ensure that potential victims of trafficking are not detained, and instead are given support and advice.**
- 2. Specialised and independent case management should be introduced to support people to stabilise in the community and engage with the NRM and immigration processes, managing any risks of absconding or re-trafficking.**
- 3. A referral to the NRM should automatically trigger release from detention, since it is only made when there are indicators of trafficking**
- 4. NRM referrals for migrants in detention should be made by an independent first responder, rather than the Home Office which is responsible for decisions to detain. Likewise, reasonable grounds decisions for migrants in detention should be made by an independent, multidisciplinary panel.**
- 5. Specialist, independent, face-to-face advice and support should be available to potential victims of trafficking in detention prior to an NRM referral being made.**
- 6. Training should be provided to IRC and healthcare staff to identify and support potential victims of trafficking.**
- 7. A statutory time limit on immigration detention should be introduced to ensure that victims of trafficking that are not successfully identified by the screening are not subjected to prolonged detention.**