

## Survivors of Trafficking in Immigration Detention

June 2019 (updated; first published October 2018)

### Executive Summary

Victims of human trafficking are held in immigration detention. This represents an egregious failure of support to them. The Home Office is key in identifying and supporting victims who are detained; it is responsible for determining whether non-EEA nationals referred to the National Referral Mechanism (NRM) are victims. There are good reasons for thinking that the Home Office's interest in immigration control undermines the system for identifying and supporting victims, resulting in their continued detention.

- Victims held in detention are often not referred to the NRM despite having discussed experiences of trafficking with numerous officials.
- People referred to the NRM in detention are often ruled not to be victims by the Home Office, despite strong indications that they are. This suggests that potential victims may be assessed against a high evidential bar – contrary to the government's own guidance.
- People referred into the NRM often have virtually no understanding of the NRM process, which is not communicated to them. Some people are unaware that they have been referred, and/or are not informed when a decision is reached.
- Detention is sometimes even maintained, despite the person detained being identified as a likely victim.
- When making a decision on whether to continue to detain someone, the Home Office weighs evidence of vulnerability against immigration control or public order factors. Our evidence suggests that, in doing so, the Home Office frequently relies on convictions and incidents of non-reporting that are a direct consequence of the victim's being trafficked and held in modern slavery.

### Recommendations

- There should be an absolute bar on the detention of victims of trafficking or any form of modern slavery.
- Referral to the National Referral Mechanism should trigger release from detention.
- Specialist support independent of the Home Office and IRCs should be available to help victims explore and prepare for referral to the NRM.
- Legal aid should be available for victims of trafficking to explore and prepare for referral to the NRM, and throughout the process; this should be available to anyone who declares themselves a victim.
- Training to identify and support victims of trafficking should be mandatory for all IRC and healthcare staff, law enforcement officers, and criminal solicitors.
- The Competent Authority for determining whether someone is a victim must be completely independent of the Home Office.

## About JRS UK

The Jesuit Refugee Service (JRS) is an international Catholic organisation, at work in 50 countries around the world with a mission to accompany, serve and advocate on behalf of refugees and other forcibly displaced persons. JRS in the UK has a special ministry to all those detained for the administration of immigration procedures and forcibly displaced people who find themselves destitute as a consequence of government policies. JRS UK runs outreach services to Heathrow IRC, and in this context encounters survivors of modern slavery and trafficking; we also run a day centre, activities and hosting scheme (At Home) for destitute asylum seekers and newly recognised refugees, a large number of whom have first-hand experience of immigration detention.

## Context

Between March 2017 and June 2019, JRS UK supported 26 Vietnamese victims of trafficking in immigration detention. Trafficking is not an intended focus of our work; these are all people we have encountered in the course of running a general outreach service to those in Heathrow IRC and who have actively made their experience known to us. It is likely that a specialist modern slavery organisation in the same context would identify many more victims in detention, as victims are more likely to make themselves known to such an organisation.

### About the National Referral Mechanism (NRM)

The NRM is the UK government's system for assessing whether someone is a victim of trafficking, or other form of modern slavery. The **"Competent Authority"** is the body or group responsible for assessing the case of someone referred to the NRM; as of April 2019, there is a Single Competent Authority, sitting within the Home Office, to address all cases of modern slavery. During most of the period covered by this briefing, different agencies acted as the Competent Authority depending on the potential victim. For non-EEA nationals, the Competent Authority was the Home Office, most often the UKVI.<sup>2</sup>

The NRM process has two stages which are *supposed* to work as follows:<sup>3</sup>

- Reasonable Grounds Decision: on the basis of information available, the decision-maker "believes but cannot prove" that the person is a potential victim. At this stage, the victim is granted a 45-day recovery period to decide on their next steps, and provided with accommodation in a safe-house if needed. Legal aid becomes available to victims at this stage, meaning many will not have had legal advice in the process of referral.<sup>4</sup>
- Conclusive Decision: on the information available "it is more likely than not" that the person referred is a victim of trafficking or modern slavery. The evidential bar for a conclusive decision is supposed to be low.

### The NRM and release from detention

Government guidance for Competent Authorities states that other branches of the Home Office must act in accordance with policy to: "release potential victims of modern slavery from immigration detention unless there is a public order reason not to do so".

In November 2017, Detention Action published a [report](#) on trafficking victims in detention. Examining the stories of 16 victims they had supported between December 2016 and June 2017, it concluded that the National Referral Mechanism was failing to protect victims in the context of immigration detention, and that a conflict of interest on the part of the Home Office between combatting modern slavery and removing those without leave to remain was a key cause of this failure. JRS UK's experience over the last two years, detailed here, indicates that the problems identified in Detention Action's research persist.

## Trafficking Victims' experiences of detention and the NRM

Most of the trafficking victims we have supported in detention were forced to work in cannabis farms. They were arrested during police raids on these, and convicted of offences relating to the production of cannabis and transferred to detention on completion of prison sentences.

### Not referred to the NRM despite extensive contact with officials

Routinely, the victims we support have had extensive contact with officials before being referred to the NRM, and are only referred once detained, sometimes after advice from a solicitor. These officials regularly include police, because victims have come into contact with officials for the first time following police raids on the places where they are being held and forced to grow drugs. We have worked with two victims of trafficking who have recounted their experiences in detail to numerous officials but not been referred to the National Referral Mechanism.

### Referred to the NRM but not found to be a victim despite strong evidence

We have supported 10 people referred to the NRM but not found to be victims. In our view, they show clear signs of being so, and often their accounts of key aspects of their experience are corroborated by medical experts.

### The Adults at Risk Policy

The [Adults at Risk](#) Policy offers a framework ostensibly intended to reduce the detention of vulnerable people, but widely criticised for failing to do so. The policy.<sup>5</sup>

- Lists various indicators of vulnerability to harm in detention, including being a victim of trafficking and being a victim of slavery.
- Has three levels, corresponding to *evidence of vulnerability* rather than *level of vulnerability*.
- Weighs evidence of vulnerability against immigration factors in deciding whether to maintain detention.

**Xuan's story** is a key example. Since Xuan was very young, he lived on the streets as he had no parents or relatives to take care of him, surviving by selling lottery tickets. He was controlled by a gang. The men who controlled him eventually trafficked him into the UK,

taking him to Russia by plane, and after 3 months in Russia made him hide in the back of a lorry to travel to the UK. The lorry was stopped and searched by police at the border. When they found Xuan, he disclosed being under 18, and he was placed into foster care. After some time, however, Xuan was approached by a man he did not know, from his same country of origin. The man took him, brought him to a house and told Xuan he was not allowed to leave. Xuan did not know where he was being held, and was severely beaten when he tried to leave the house. As he was afraid of this man, he stayed in the house and did what he was told, which included taking care of some cannabis plants. He spent 6 months in this place, until the police conducted a raid one day and arrested him. The man who had brought him there was not at home on that day, so he was not arrested, and Xuan was scared that he would find him again. Once again, Xuan disclosed being under 18, but this time was not believed and was convicted as an adult. He also disclosed his full story, claimed to be a victim of trafficking, and was referred to the NRM. Two months later, his claim was rejected. He was later convicted of being concerned in the production by another of controlled Class B drugs and sentenced to 1-year imprisonment. After he finished serving his sentence, Xuan was issued with a deportation order and detained in an Immigration Removal Centre. He later claimed asylum, something he had been unaware of up to that point. While in detention, Xuan saw a doctor and disclosed several instances of ill-treatment at the hands of his traffickers, both in his home country and in the UK. The doctor identified this as amounting to torture, and accordingly issued a Rule 35(3) report. Despite recognising him as a Level 2 Adult at Risk, the Home Office decided to maintain detention because he is considered likely to abscond and his release “carries a risk of high harm”. The evidence used to justify this position relates to his illegal entry into the UK, his conviction for drug production and his having “absconded” while in foster care, all of which are a direct result of his being trafficked into the country and forced into slavery.

Xuan was finally released after 7 months in detention.

Cases such as Xuan’s strongly suggest that, where victims are referred to the NRM from within detention, either a high evidential bar is used for determining that someone is a victim. They also suggest the need for independent support to victims at the beginning of the referral process, including specialist legal advice.

### Referred to the NRM, but not informed about the process

Understanding of the NRM is extremely limited among the population we have worked with. In particular, we have supported several people who are unclear about the stage or outcome of their NRM referral. We have supported one man who had been referred to the NRM and received a negative conclusive grounds decision, but was unaware that he had ever been referred.

**Huy’s story:**<sup>6</sup> Huy is part of a minority in his country of origin. His father died when he was five years old, and his family suffered persecution because of their Christian faith. Fearing for his safety, his mother encouraged him to leave the country, hoping he could later bring the whole family to safety. She found someone to help organise his journey. Huy was told he could repay travel costs once he was working in Europe. He was taken

through China, Russia, France and the UK in containers. Once he reached the UK, Huy was provided with accommodation and a job. Initially, he was treated well but later realised the plants he had to look after were really drugs. He tried to escape, but was soon recaptured because he did not know where he was and could not ask for help. He was beaten, tortured and raped by his traffickers. He was also shown pictures of his family in his home country, and told that his mother, wife and children had perished in a flood. Huy was arrested after a police raid. Initially, he did not disclose his story to the police because he was scared, as he and the traffickers were being held together. He also felt that he could not tell the police everything that had happened to him, feeling shame in having been sexually abused. He only answered direct questions, and felt that the police were more interested in the drugs than in him. He was nonetheless referred into the NRM by the police, but this was not communicated to him. He subsequently received a negative conclusive grounds decision, which, again, was not communicated to him. His difficulty in communicating with them may have affected the quality of referral.

Huy was assigned a duty solicitor, who advised him to plead guilty to the offences. Huy did not want to do that but, having been advised that he really had no other option, followed his solicitor's advice. He was convicted of production of a Class B controlled drug and sentenced to 1 year 3 months' imprisonment. After his sentence, he was held under immigration powers and transferred to an Immigration Removal Centre. In detention, Huy saw a doctor, who completed a Rule 35(3) report and identified him as having suffered torture at the hands of his traffickers. Despite recognising Huy as a Level 2 Adult at Risk, the Home Office issued a decision to maintain his detention as the "negative immigration factors" outweighed his vulnerability. The Home Office specifically referenced Huy's "unacceptable character, conduct or associations" and his conviction for drug production, which was clearly a result of his trafficking. He explained that detention triggers memories of his previous captivity and torture.

Huy has now been able to access independent legal advice and been released from detention. At this point, he was also advised that he should be referred into the NRM. It was only after attempting to gain recognition as a victim of trafficking via the NRM that he discovered he had already been referred and given a negative conclusive grounds decision. Cases such as his show an urgent need for the NRM process to engage better with victims, including provision of independent support to help potential victims engage and explore referral.

### Referred to the NRM and given a reasonable or conclusive grounds decision, but still held in detention

Two individuals we supported were referred to the NRM and given a reasonable grounds decision, but still held in detention.

**Kim's story:** Kim comes from an ethnic minority family in an Asian country. With no family left to take care of him, he was forced to start working at a very young age, and was consequently exploited and overworked. Having been asked by his employer to pay a significant sum in order to cover some damage, he was forced to borrow from a loan

shark. Unable to pay his ever-growing debt, Kim was then sold into slavery and trafficked into China and then, after a few years, into Russia. He was forced to work in severely poor conditions and with no salary, and was routinely beaten. After some years, he was forced to come into the UK by boarding a lorry under threat of death. During the journey, he was intercepted by immigration enforcement officers and placed in immigration detention. After his release, Kim was intercepted by the trafficking gang that had brought him into the UK and taken to an abandoned house, where he was forced to work in a cannabis factory. Kim tried to escape, but was caught and badly beaten with a metal rod and cut multiple times with a knife.

A few months later, Kim was arrested and convicted of produce of a controlled drug, and subsequently sentenced to 8 months' imprisonment. At the end of his sentence, he was transferred in immigration detention and served with a deportation order. Having obtained independent legal advice, Kim officially claimed to be a victim of human trafficking and was referred into the National Referral Mechanism. Kim further applied for and was served with a Rule 35 report, through which the medical practitioner stated that the scars on Kim's body were consistent with the history of torture he claimed. He was officially assessed as level 2 under the Adults at Risk policy, yet the decision was made to maintain detention due to his criminal conviction, which was a result of his being trafficked. Kim subsequently received confirmation that the Competent Authority, having carefully considered his case, concluded that there were reasonable grounds to believe he had been a victim of modern slavery. As a result, he was granted a 45-day recovery and reflection period, during which he ought to be legally entitled to safe accommodation and support. Kim spent the entire period in detention. Kim was finally released after over 10 months in detention. However, he was unable to access specialist support upon release, and disappeared soon after.

Kim's case shows the very serious problems with allowing immigration factors, or spurious concerns with public order, to outweigh acknowledged vulnerability when deciding whether to continue detention.

### **Wider context of treatment of "foreign national offenders"**

This occurs in a context where anyone dubbed a "foreign national offender" acquires precarious immigration status, even if their immigration status was stable before, and has even fewer legal rights and protections than others with precarious immigration status.<sup>7</sup> One effect is that it is harder for them to secure release from detention. For example, most people in detention have automatic bail hearings every four months; "foreign national offenders" do not.<sup>8</sup> It is significant that, under hostile (or compliance) environment legislation, many things that would not be a crime for a British citizen are deemed a crime for people without immigration documents and others with precarious immigration status. Many who now fall into the category of "foreign national offender" may have crimes such as driving, and it is therefore unclear why they are considered to pose a risk to the public that justifies maintaining detention. It is specifically relevant that it is a criminal offence to work without immigration documents, or on a visa that does not permit work;<sup>9</sup> something else that is likely to entrap foreign national victims of trafficking in a web of unjust convictions.

## **Criminal convictions, detention, and human trafficking**

In line with the individual stories detailed, all the victims we supported have criminal convictions for actions that they were forced by traffickers to carry out; they have normally been transferred to detention on completion of prison sentences served for offences related to the production of cannabis, following police raids on cannabis farms where they were being forced to work. A few victims had convictions for working without permission to do so. Where victims have applied for bail and been refused, these convictions are routinely cited by Home Office officials as reasons for maintaining their detention – sometimes in the face of a reasonable grounds decision.

It is significant that “public order” considerations are deemed a reason for maintaining the detention of a recognised victim of trafficking and/ or modern slavery. In practice, “public order” considerations heavily weigh criminal convictions so it is a matter of concern that detained victims are very likely to have criminal convictions as a result of being trafficked or otherwise held in slavery. More broadly, it is unclear why a foreign national offender, having served their sentence, should not be supported and monitored by the probation service in the community, as a UK national offender would be. Therefore, where victims of trafficking are also genuinely a risk to public safety, they should be released from detention and given support in line with what is generally available to ex-offenders, in addition to support to help them recover from their ordeal of being trafficked.

## **Detention further traumatises victims of trafficking**

In our observation, detention always has a profound negative impact on the mental and emotional health victims of trafficking; as in the case of Huy, it often recalls and compounds the trauma of being held in servitude. Detaining victims of trafficking is clearly incompatible with supporting them.

## For more information

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<sup>1</sup> The international Protocol to Prevent, Suppress, and Punish Trafficking in Persons defines it as the “recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”

<sup>2</sup> Which branch of the Home Office was responsible varied depending on where in the UK the referral was made, and other criteria, such as whether the victim is seeking asylum. See “Victims of modern slavery – Competent Authority guidance”, Version 4.0.

<sup>3</sup> More details can be found on the National Crime Agency’s website.

<sup>4</sup> Solicitors have very strict constraints on what they can do under different legal aid provisions, so constraints on legal aid for victims of trafficking negatively impact the referral process even where a victim has received legal advice for another issue, such as asylum or immigration bail; an asylum solicitor may mention the referral process, but be unable to assist further with it.

<sup>5</sup> More details can be found in Medical Justice’s report “Putting Adults at Risk: a guide to understanding the Home Office’s ‘Adults at Risk’ policy and its history”.

<sup>6</sup> This case has been significantly updated since the first version of the briefing, published in October 2018, to incorporate new information.

<sup>7</sup> In his second review of immigration detention (July 2018), Stephen Shaw noted that “a significant proportion of those deemed FNOs had grown up in the UK, some having been born here but the majority having arrived in very early childhood. These detainees often had strong UK accents, had been to UK schools, and all of their close family and friends were based in the UK.”

<sup>8</sup> Under the Immigration Act 2016.

<sup>9</sup> Immigration Act 2016, Pt 1, chapter 2, section 34.