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Raising the threshold and depriving trafficking support

Briefing on Clause 59 of The Nationality and Borders Bill for Lords report stage

*"Increasing the threshold that these traumatised individuals must meet, almost from the get-go, to receive support will not only leave many with the choice of slavery or destitution; it will fundamentally undo the years of hard work by government, police, NGOs, charities and Members of both Houses."*¹ - Lord Alton

Background: The National Referral Mechanism (NRM) is a framework for identifying and referring potential victims of modern slavery, **including child victims**, and ensuring they receive support. If a person is suspected of being a victim of modern slavery, they will be referred to the NRM and they'll be assessed to see if there are Reasonable Grounds (RG) to believe the person is a victim of modern slavery. This is an incredibly important step in the journey of a victim's recovery, **giving them access to vital legal and financial support, safe accommodation, and an exit from their exploitation.**

What Does Clause 59 Do? Clause 59 of the Nationality and Borders Bill effectively raises the threshold for identifying a victim of modern and for a victim accessing the NRM. It does this by amending the language of Section 49 and 51 of the Modern Slavery Act 2015. For example:

*The sorts of things which indicate that a person **may be** a victim of slavery or human trafficking;*

Becomes:

*The sorts of things which indicate that a person **is** a victim of slavery or human trafficking.*

In the New Plan for Immigration the government made it clear it believes the threshold for a RG decision is too low, despite the absence of any evidence for this claim. During the consultation, organisations from across the modern slavery sector responded by stating the threshold should not be increased. Increasing the threshold would place too high an evidence burden on victims prior to them receiving specialist advice and support. **This will block victims from accessing trafficking support, this will include child victims and those who were children at the time of being exploited.**

*"The reality of Clause 59 is that raising the threshold—from "reasonable grounds" to believe that someone maybe a victim of modern slavery, to "is" such a victim—could lead to the national referral mechanism failing to identify victims of modern slavery"*² – The Lord Bishop of St Albans

¹ <https://hansard.parliament.uk/Lords/2022-02-10/debates/77D527E6-362A-4F96-9CDD-1BDD25FFA5EA/NationalityAndBordersBill>

² <https://hansard.parliament.uk/Lords/2022-02-10/debates/77D527E6-362A-4F96-9CDD-1BDD25FFA5EA/NationalityAndBordersBill>

The Problem:

Changes to the first decision making stage of trafficking and modern slavery claims, as laid out in the Nationality and Borders Bill, will see survivors **forced to meet an even higher threshold of evidence, almost immediately**. As this initial decision provides the gateway to support, this decision is made on the basis of evidence provided **before a potential victims has often had an opportunity to rest, eat or feel safe, let alone secured legal advice, a translator, or advocate** to help support disclosure of abuse.

In 2020 the Single Competent Authority made 10,608 RG and 3,454 conclusive grounds (CG) decisions. Of these: 92% of RG and 89%³ of CG were positive. **This shows that the vast majority of those who receive a positive RG decision go on to be confirmed as victims**. So far, the government has given no explanation why this change is necessary. In 2020, **81% of reconsidered claims at 'RG' stage were later positive**⁴. However, as a negative decision means support is rejected, survivors are unable to push to have their decisions reconsidered.

Increasing the threshold for an initial NRM decision would mean shutting victims out from support, not on the basis that they were not trafficked, but on the basis that they could not provide enough evidence to reach the threshold. The implications of this are severe and would result in distrust of the system, fewer victims coming forward for fear they would not be believed and their credibility damaged and increased re-trafficking as victims with negative decisions are re-exploited due to a lack of options.

Case Study: *"Precious was eleven when she was told by her mother she would be working in the home of a family in London. She was very happy as she would be able to help her family with her earnings and attend school. When she arrived, she was given a mattress in the basement as her place to stay, it was very cold and damp. The husband of her employer began sexually abusing her and his wife treated her very badly, often physically abusing her due to the most minute perceived error in the way she carried out her chores. She was never able to attend school, working day and night. A primary school teacher noticed signs of neglect in Precious when she was dropping off the younger children in her care to reception and notified her school's safeguarding lead who alerted Children's Services. Precious came into her care but she was too traumatised to disclose what happened to her in that house. Her social worker referred her into the NRM but she had limited information to provide, regardless the reasonable grounds was positive as the threshold was low, giving Precious and her social worker time to provide further information for her conclusive grounds decision down the line. Changes in this Bill would mean that precious may well not have received the vital Reasonable Grounds decision"*

The Solution: Putting a fair and clear definition of what the threshold for a RG on the face of the bill, in the same way the bill does for CG decision, will ensure victims aren't needlessly blocked from accessing support.

³ <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2020>

⁴ <https://afterexploitation.com/2021/07/02/new-data-majority-of-trafficking-claims-later-found-to-be-positive-after-reconsideration/>

In the debate on the 10th February the minister rejected the amendment claiming “*the reasonable grounds threshold would be contained within legislation, whereas the conclusive grounds threshold would remain only in guidance*”⁵. **This is incorrect.** The amendment mirrors the provision for how the threshold for a CG decision is to be defined in guidance.

Clause 59 Page 63, line 2 insert “(1A) Guidance issued under subsection (1) must, in particular, provide that the determination mentioned in paragraph (c) is to be made on the standard of ‘suspect but cannot prove’.”

Page 63, line 9 insert “(4) If regulations under subsection (2) make provision for determining whether a person is a victim of slavery or human trafficking (as mentioned in paragraph (a) of that subsection), they must provide that the determination is to be made on the standard of ‘suspect but cannot prove’.”

Explanatory note: this amendment would ensure that amendments made to the Modern Slavery Act 2015 do not raise the threshold for a Reasonable Grounds decision when accessing the National Referral Mechanism in line with 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

⁵ <https://hansard.parliament.uk/Lords/2022-02-10/debates/77D527E6-362A-4F96-9CDD-1BDD25FFA5EA/NationalityAndBordersBill#contribution-86585885-1F5A-4D55-AE81-A3164E9B1994>