

## **Nationality and Borders Bill 2021: House of Commons, Committee Stage Women for Refugee Women Briefing on Clauses 46, 47 & 51**

*This briefing draws on a joint briefing that Women for Refugee Women have supported, alongside leading anti-trafficking organisations, and focuses on Clauses 46, 47 and 51.*

Lawyers from Garden Court Chambers, who produced a legal opinion on the impact of the Nationality and Borders Bill (the Bill) on women, have stated:

*We have real concerns that these changes will make it harder for women and girls, who are victims of trafficking and modern slavery, to be positively identified and protected, contrary to the UK's obligations under both Article 4 of the European Convention on Human Rights and the European Convention on Action against Trafficking in Persons.*

### **Clauses 46 & 47: Information Notices & Damage to Credibility**

Clause 46 specifies that a person who has made a protection or human rights claim may be served with a 'slavery or trafficking information notice'. This means that they will be required to provide relevant information relating to being a victim of slavery or trafficking within a specified period.

Clause 47 states that if they provide this information after the specified period, 'without good reason', this will damage their credibility in relation to a reasonable grounds or conclusive grounds decision from the National Referral Mechanism.

The government states that these information notices are designed to:

- 1) Identify individuals subject to immigration control who may be the victims of slavery;
- 2) Enable the potential grounds to be a victim of modern slavery to be considered alongside a protection/human rights claim, ahead of any appeal hearing;
- 3) To reduce costs by more efficiently considering protection/human rights claims and referrals as a potential victim of modern slavery concurrently.

In summary, we have four key concerns with the information notices:

- 1) They do not account for the impacts of trauma on victims' willingness and ability to self-identify or disclose;

- 2) The notice conflates immigration and modern slavery decision-making, posing risks to the effectiveness of anti-slavery efforts;
- 3) The notice applies only to those who have made a protection/human rights claim and is therefore discriminatory between victims;
- 4) The notice improperly assigns the obligation to identify victims on the victims themselves rather than the state.

These notices do not take into consideration how incredibly challenging it can be for a victim of trafficking or modern slavery to identify themselves as a victim, let alone feel safe enough to disclose this information. It can take years for a victim to come to terms with their exploitation. **Indeed, a GLA Conservatives Report noted that the police stated it took on average two years for victims of slavery from West Africa, who had been coerced via jujū, to reveal what had happened to them.**<sup>1</sup>

A victim of modern slavery or human trafficking may be prevented from disclosing information for a number of legitimate reasons. Research from the Helen Bamber Foundation, experiences of frontline staff and survivors, *as well as the government's own Modern Slavery Guidance*<sup>2</sup> all provide extensive examples of situations where late disclosure may occur:

- Victims may be coerced or briefed by those who exploit them to tell a particular story or withhold certain information, and they may fear repercussions;
- The impact of trauma can prevent a person from identifying themselves as a victim of trafficking, including avoidant behaviours and memory fragmentation consistent with post-traumatic stress disorder;
- Distrust of authorities, including fear of punishment or concerns about confidentiality when sharing information;
- Fear of reprisals from traffickers against them, their children, families, or friends if they make an allegation of slavery;
- Pressures and fears related to bonded debt;
- Being unable or unwilling to identify themselves as a victim, for example because they may lack understanding of what constitutes modern slavery or they might not understand that they have been exploited in this way;
- Stockholm Syndrome or an ongoing or previous relationship with the trafficker.

The above-mentioned legal opinion by Garden Court Chambers confirms that:

*The Government's proposal to serve potential victims of trafficking, who raise asylum or human rights claims, with a time-limited notice in which to disclose all relevant information is contrary to the acknowledgement in case law, guidance and policy, that*

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<sup>1</sup> GLA Conservatives report, *Shadow City: Exposing Human Trafficking in Everyday London* (2013) <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Shadow-City.pdf>

<sup>2</sup> *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* (2020) <https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims>

*such protection claims are necessarily complex and will often require extensive, careful preparation. **The use of any sort of truncated time frame or accelerated procedure does not adequately ensure that the vulnerabilities and barriers to disclosure, particularly for women and girl victims of trafficking, are fairly accounted for.***

Clauses 46 and 47, in requiring that information is provided by a specified date, will mean that **fewer women are recognised as victims of trafficking or modern slavery, and so will not receive the support and protection they need.**

Further, if victims are deterred or prevented from receiving support, they may be less able/likely to engage with the police, and provide information that could help prosecute traffickers.

In addition, a person who has submitted a protection/human rights claim, and who has been trafficked (regardless of whether the claim relates to trafficking), will be required to adhere to the information notice. This clause, if enacted, will therefore equate to different processes being in place for different victims based on their nationality. As a result, the practice of requiring early or extra information from some victims is discriminatory and directly contravenes the prohibition of discrimination in Article 14 of the European Convention on Human Rights and Article 3 of the European Convention on Action against Trafficking in Persons.

Furthermore, whilst we welcome the government's desire to increase efficiency in the system, the measures presented in Clauses 46 and 47 place increased responsibility onto the victim to come forward, and away from the authorities who have a clear duty to identify.

Finally, these notices could also lead to an increase in case processing delays, as it is not clear how individuals will be able to present evidence of 'good reasons' if they fail to provide information by the specified deadline.

**Therefore, we urge members of the Public Bill Committee to disagree to a motion that Clauses 46 & 47 stand part of the Bill.**

### **Clause 51: Disqualification from Protection**

Unamended, the Bill will disqualify from protection any victim of modern slavery who is considered to be a 'threat to public order'. However, the definition of 'threat to public order' within the Bill is far too wide.

Women for Refugee Women are aware of women who have experienced sexual and other forms of labour exploitation, who have been wrongfully prosecuted and imprisoned for criminal offences related to their exploitation, and who need protection.

Thus, we object to this clause **because it is wholly unfair to punish victims for the crimes they were forced to commit. Further, if a woman is a victim of trafficking, she should be supported and protected whether or not she has been convicted of a criminal offence.**

With reference to 'bad faith', which is undefined in the Bill, the clause may even disqualify those from protection who are not convicted of any offence at all.

**We therefore urge members of the Public Bill Committee to disagree to a motion that Clause 51 stand part of the Bill.**

Our main concerns with Clause 51 are as follows:

1. This clause sets a **dangerous precedent by providing that because someone is convicted of one crime, they do not deserve protection** when they have been a victim of another.
2. This clause encourages traffickers to exploit people with criminal records as they will no longer qualify for protection. **This means more victims of modern slavery.**
3. The clause **breaches the UK's obligations towards victims of trafficking to identify and protect them.**

The West Midlands police dismantled the UK's biggest modern slavery network under Operation Fort. Eleven members of a trafficking gang were convicted thanks to the witness testimony of 60 victims. One third of these victims had criminal convictions and had been targeted by the traffickers because they were prison leavers and therefore vulnerable. Under Clause 51, these 20 victims may have been excluded from protection due to their criminal records, and therefore would not have supported with the investigation into the trafficking gang.

The charity **Hope for Justice** found that **29% of the victims of modern slavery that they support have committed offences that would meet the criteria under public order grounds**, and a further 13% have committed wider offences that may or may not meet the criteria.<sup>3</sup> This is a huge number of victims currently being supported who could be excluded from support under this Bill.

*For further information please contact Priscilla Dudhia, Policy & Advocacy Coordinator at Women for Refugee Women at [priscilla@refugeewomen.co.uk](mailto:priscilla@refugeewomen.co.uk) / 07869 147 248.*

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<sup>3</sup> Independent Anti-Slavery Commissioner, Letter to the Home Secretary re Nationality and Borders Bill (7 September 2021) <http://www.antislaverycommissioner.co.uk/media/1668/iasc-letter-to-the-rt-hon-priti-patel-mp-home-secretary-march-2021.pdf>