

Tackling the blind spot of the UK anti-slavery regime

The role and responsibility of prisons in securing
the rights of modern slavery survivors

Research report

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Any mistakes or omissions in this report are ours alone.

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Acronyms

ATLEU	Anti-Trafficking and Labour Exploitation Unit
BOP	Federal Bureau of Prisons (United States)
CG Decision	Conclusive Grounds Decision
CSIP	Challenge, Support and Intervention Plan
CSRA	Cell Sharing Risk Assessment
ECAT	Council of Europe Convention on Action Against Trafficking in Human Beings
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FRO	First Responder Organisation
GRETA	Group of Experts on Action against Trafficking in Human Beings
HMPPS	His Majesty's Prison and Probation Service
HMIP	His Majesty's Inspectorate for Prisons
IECA	Immigration Enforcement Competent Authority
IMA	Illegal Migration Act 2023
IOM UK	International Organisation for Migration UK
Modern Slavery PEC	Modern Slavery and Human Rights Policy and Evidence Centre
MSA	Modern Slavery Act 2015
MSVCC	Modern Slavery Victim Care Contract
NABA	Nationality and Borders Act 2022
NGO	Non-Governmental Organisation
NRM	National Referral Mechanism
NIPS	Northern Ireland Prison Service
RG Decision	Reasonable Grounds Decision
RNA	Recovery Needs Assessment
SCA	Single Competent Authority
SPOC	Single Point of Contact
SPS	Scottish Prison Service

I. Introduction

Modern slavery¹ in the prison context has not been subject to an extensive academic and public debate in the UK or worldwide. There has been growing literature on the exploitation of prisoners as cheap labour, either by the private sector or by states directly.² Modern slavery has also recently become an issue of consideration for public procurement practices,³ with public bodies required to identify and prevent the risk of modern slavery in their supply chains. This includes the supply chains of contractors involved with prisons.⁴ Yet little is known about what happens when individuals who have been subject to modern slavery end up in prisons, and whether and how international and domestic rules designed to protect and support survivors of modern slavery apply behind prison walls.⁵

This research project was conducted jointly by the University of Essex, International Organization for Migration UK (IOM UK), and Hibiscus Initiatives with a view of bridging this knowledge gap. It sought to examine the experiences and treatment of survivors of modern slavery in UK prisons and their compatibility with standards of protection enshrined in international human rights law, notably the European Convention on Human Rights (ECHR) and the Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT).

There are various reasons why a survivor of modern slavery may end up in prison. Sometimes, individuals are trafficked with the sole purpose of being compelled to engage in criminal offences, such as shoplifting, cannabis cultivation, or drug trafficking.⁶ In the UK context, one of the most prevalent types of such ‘criminal exploitation’ involves so-called ‘county lines’ – a phenomenon where organised criminal networks involved in exporting illegal drugs into one or more importing areas within the UK, use children and vulnerable adults to move and store drugs and money.⁷ While victims subject to ‘criminal exploitation’ may benefit from the non-punishment principle, enshrined in both

¹ Modern slavery is used as an umbrella term throughout this report. It covers practices prohibited under Article 4 ECHR (slavery, servitude, forced and compulsory labour, and human trafficking) and is used interchangeably with human trafficking. This is an understanding expressly used in the Modern Slavery Act 2015.

² University College London (UCL), ‘International Workshop on “The Labour and Social Security Rights of Captive Workers”, 3-4 July 2023’, the papers of the workshop will be published in 2024. For practices in the US, see Shira Hoffer, ‘Involuntary Servitude: How Prison Labor Is Modern Day Slavery’ (*Harvard Political Review*, 3 February 2022) <<https://harvardpolitics.com/involuntary-servitude-how-prison-labor-is-modern-day-slavery/>> accessed 18 October 2023.

³ UK Government Cabinet Office, PPN 02/23 - Tackling Modern Slavery in Government Supply Chains - Guidance (HTML), updated 27 April 2023.

⁴ UK Ministry of Justice, ‘Modern Slavery Transparency Statement 2020-2021’ <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1034615/moj-modern-slavery-statement.pdf>.

⁵ While the term ‘survivor’ is often considered preferable to the term ‘victim’ and has been widely used in the scholarship and among activists, the report often uses the term ‘victim’ because it features in the international instruments, jurisprudence and many official documents. These terms are used interchangeably.

⁶ UK Home Office, Home Office Guidance, Criminal exploitation of children and vulnerable adults: county lines, updated 7 February 2020.

⁷ UK National Crime Agency, ‘County Lines’ <<https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/drug-trafficking/county-lines>> accessed 18 October 2023.

international⁸ and domestic law,⁹ this report does not focus specifically on the way this principle is operationalised in practice.¹⁰

In contrast with cases of ‘criminal exploitation’, there may be situations where a status of being a modern slavery survivor has no bearing on an individual’s offending and as such cannot extinguish their culpability. Notably, the non-punishment principle mentioned above does not provide a blanket immunity from prosecution and punishment to the victims of modern slavery.¹¹

Whether or not the imprisonment of survivors of modern slavery is justified in the first place, international instruments that contain obligations of states to protect victims of human trafficking do not offer a basis for excluding from such protection individuals who have committed criminal offences. On the contrary, international law including most notably the ECHR and the ECAT, requires that every victim of human trafficking is identified and offered support and protection without discrimination on any grounds.¹² As already noted, this does not mean that survivors of modern slavery who are involved in criminal offences could never be prosecuted and punished for such offences. However, protection from prosecution and punishment governed by Article 26 ECAT must be distinguished from general protection and assistance guaranteed to every victim or potential victim of modern slavery including when they are in prison.

In the UK, the policy on victim identification outlined in the Modern Slavery Act Statutory Guidance (‘Statutory Guidance’) stipulates that prisons ‘have responsibility for identifying and supporting survivors of modern slavery and for raising awareness of the issue amongst prisoners/individuals in detention and staff’.¹³ While this statement has been repeated in every update to the Statutory Guidance since 2020, there has been no concrete guidance to allow operationalisation of this responsibility until 2022. Even after such guidance has been issued for England and Wales,¹⁴ there has been little evidence from practice to demonstrate that this duty has been duly discharged. Accordingly, there is currently no knowledge of how the existing mechanism for victim identification and protection operates in prisons in the UK.

⁸ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 16 May 2005, entered into force 1 February 2008) CETS 197 (ECAT) art 26. For a comprehensive discussion of this principle see Marija Jovanović and Maayan Niezna, ‘Non-Punishment of Victims/Survivors of Human Trafficking in Practice: A Case Study of the United Kingdom’ (Council of Europe 2023); Marija Jovanović, ‘The Principle of Non-Punishment of Victims of Trafficking in Human Beings: A Quest for Rationale and Practical Guidance’ (2017) 1 *Journal of Trafficking and Human Exploitation* 41; Ryszard Wilson Piotrowicz and Liliana Sorrentino, ‘Human Trafficking and the Emergence of the Non-Punishment Principle’ (2016) 16 *Human Rights Law Review* 669.

⁹ Modern Slavery Act 2015 (2015 c. 30) (MSA) s 45; Human Trafficking and Exploitation (Scotland) Act 2015 (2015 asp 12) s 8; Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (2015 c. 2) s 22.

¹⁰ For a detailed analysis of this question, see Jovanović and Niezna (n 8). See UK Independent Anti-Slavery Commissioner, ‘The Modern Slavery Act 2015 Statutory Defence: A Call for Evidence’ (2020) <<http://www.antislaverycommissioner.co.uk/media/1478/the-modern-slavery-act-2015-statutory-defence-call-for-evidence.pdf>>. The report notes that ‘There is little clarity about the use of this defence which makes it harder to know that victims are being protected and the system is being protected from those who seek to abuse the defence,’ p. 11.

¹¹ *VCL and AN v the United Kingdom*, Application nos 77587/12 and 74603/12, Judgement of 16 February 2021. See generally Jovanović, ‘The Principle of Non-Punishment of Victims of Trafficking in Human Beings’ (n 8); Jovanović and Niezna (n 8).

¹² ECAT art 3; European Convention for the Protection of Human Rights and Fundamental Freedoms 36 (ECHR) ETS 5 (1950) 213 UNTS 222, entered into force 3 September 1953, amended by Protocols Nos 3, 5, 8, and 11, entered into force 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998. art 4.

¹³ UK 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 3.5, updated 9 October 2023 para 4.32.

¹⁴ In 2022, HMPPS and HM Prison Service have produced guidance for staff working in prisons and for prisoners in England and Wales: UK Home Office, Modern Slavery Act 2015 – Statutory Guidance for England and Wales, Version 1.00.

It must be noted that this is not a uniquely British problem. Only a handful of jurisdictions consider the issue of survivors of modern slavery in prisons and how to support them, albeit not in a comprehensive or systematic way.¹⁵ There is similarly a dearth of guidance at the international level to elucidate the role and responsibility of prisons for identifying and protecting survivors of modern slavery.¹⁶

Furthermore, this research has been conducted against numerous developments in the domestic legal and policy framework on modern slavery. Thus, in 2023, following a request for judicial review initiated by the Anti-Trafficking and Labour Exploitation Unit (ATLEU), the UK Government issued the first Modern Slavery Guidance for prisons in England and Wales.¹⁷ This represented a globally pioneering effort to incorporate the issue of modern slavery into the prison governance framework in a comprehensive and systematic way.¹⁸ His Majesty's Prison and Probation Service (HMPPS) is developing further guidance specific to its three core delivery functions (prisons, probation and youth custody) in England and Wales. This research has been approved by the HMPPS National Research Committee and will be used to inform future comprehensive guidance.

However, parallel to these developments aimed at improving the identification and support of survivors of modern slavery in the prison system, the UK has introduced legislation that creates barriers to accessing support for individuals sentenced to imprisonment. Namely, the Nationality and Borders Act 2022 (NABA) and the Illegal Migration Act 2023 (IMA) disqualify any potential or confirmed victim of modern slavery who is not a British national from protection guaranteed to victims of human trafficking and modern slavery by international and domestic law when they are sentenced to a term of imprisonment.¹⁹ Section 63 (3) of NABA originally provided that a person with a reasonable grounds decision *may* be disqualified from protection if the Competent Authority was satisfied that the person would be a 'threat to public order' if they had received a custodial sentence of 12 months or longer. Section 29 of the IMA goes further by placing a *duty* on the competent authority (rather than a possibility) to disqualify from protection and now applies this provision to those given a custodial sentence of any length. This is contrary to international law currently binding in the UK, which allows only a narrow exception from protective obligations on public order grounds.²⁰ Such an exception must be narrowly interpreted and requires an individualised assessment.²¹ Accordingly, it is difficult to predict how the new legislation will affect recent efforts within the prison service in England and Wales, as well as in Scotland and Northern Ireland, to

¹⁵ Section IV discusses examples from other jurisdictions, notably Italy, Austria, and the US.

¹⁶ In June 2023 GRETA – an expert group tasked with monitoring the implementation of the ECAT – adopted a new questionnaire for the fourth evaluation round on the implementation of ECAT by the Parties, which includes for the first-time direct reference to identification of modern slavery survivors in prison. Question 23 of the fourth evaluation round questionnaire asks: 'What measures are taken in your country to identify victims of THB in immigration detention centres and prisons?' The full questionnaire can be accessed here: GRETA, Council of Europe, 'Questionnaire for the Evaluation of the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties, Fourth Evaluation Round, Thematic Focus: Addressing Vulnerabilities to Trafficking in Human Beings' (2023) GRETA(2023)11 <<https://rm.coe.int/questionnaire-for-the-evaluation-of-the-implementation-of-the-council-1680abd8fa%C2%A7>>.

¹⁷ HMPPS, Modern Slavery Guidance for prisons in England and Wales, Version 1.4 2023.

¹⁸ See section IV.5 about efforts in other countries.

¹⁹ Nationality and Borders Act 2022 (2022 c. 36) (NABA) s 63; Illegal Migration Act 2023 (2023 c. 37) (IMA) s 29.

²⁰ ECAT art 13(3). See Marija Jovanović, 'Legal Analysis of the Human Rights Compatibility of the Modern Slavery Clauses in the Illegal Migration Bill (Clauses 21-28)' (Modern Slavery PEC 2023).

²¹ GRETA, Council of Europe, 'Written Evidence Submitted to the Joint Committee on Human Rights, Legislative Scrutiny: Illegal Migration Bill (IMB0024)' (2023) <<https://committees.parliament.uk/writtenevidence/119915/pdf/>>.

improve the identification and support of potential, or identified, victims of modern slavery.

Notwithstanding such uncertainty, this research is the first attempt to collect empirical evidence on the experiences of adult modern slavery survivors in prisons. It marks the first opportunity to evaluate whether and how the recent HMPPS Modern Slavery Guidance has contributed, or has a capacity to contribute, to their treatment in line with international human rights standards enshrined in the ECHR and the ECAT. The following sections present findings of this research study and a set of recommendations to inform legal and policy efforts in this domain.

Section II explains the scope and methodology of this study.

Section III discusses the prevalence of modern slavery survivors in prisons throughout the UK. The report does not purport to provide a complete number of survivors of modern slavery currently in prisons. Instead, it indicates the potential scale of this phenomenon based on secondary research and data as well as the empirical data obtained through the interviews with survivors, those who provide support and assistance to them, and prison staff and officials. These findings suggest that the presence of survivors of modern slavery in prisons is not a rare occurrence.

Section IV presents an overview of the legal and policy framework currently in place in the UK relevant for this issue, comprising both international and domestic law. It explains first the legal responsibility of states to identify and protect survivors of modern slavery enshrined in Article 4 ECHR and ECAT and considers how such responsibility affects prisons as public authorities with the role in safeguarding human rights overall. The HMPPS Modern Slavery Guidance for prisons and ongoing work to develop further comprehensive guidance are a way of giving effect to this human rights obligation and represent a pioneering effort to integrate modern slavery and prison governance policy domains.

Against this backdrop of international law, Section IV explains the existing regime for victim identification and support in the UK embodied in the Modern Slavery Act 2015 (MSA) and the current Modern Slavery Statutory Guidance, which at present only briefly refers to prisons as public authorities with ‘responsibility for identifying and supporting survivors of modern slavery’. It also evaluates the HMPPS Modern Slavery Guidance for prisons in England and Wales from 2023 which will be further revised and informed by this research report. Section IV also reflects on the recently introduced legislation in the UK that is likely to have a significant impact on how victims who are not British nationals or lawful residents are identified and supported.²² This will undoubtedly also affect the ongoing efforts by prison services in all devolved jurisdictions to improve identification and support of survivors.

Section V presents the core findings of the research study and identifies challenges to the identification and support of modern slavery survivors in prisons in practice, and the extent to which the recent HMPPS Modern Slavery Guidance responds to these. It explains the significant challenges in firstly identifying potential victims of modern slavery in prison and secondly the practicality of referring such victims to the NRM given that the prison services in the UK are not a First Responder Organisation (FRO).²³ This section also considers the support and assistance which is available to those in prison who do receive a positive ‘reasonable grounds’ or ‘conclusive grounds’ decision²⁴ and highlights

²² NABA 2022; IMA 2023.

²³ For a discussion of the NRM and the role of the First Responder Organisations, see Section IV of this report.

²⁴ For a discussion of these decisions, see Section IV of this report.

the limitations of that support compared to the responses to survivors of modern slavery supported in the community.²⁵ Finally, the section also reflects on the importance of ensuring that the bail and release of survivors of modern slavery from prison is managed safely to avoid the risk of their being subject to re-trafficking.

Section VI follows by presenting some examples of good practice that emerged from the empirical findings. Prior to that, this section addresses the question of what could be understood by the term ‘good practice’ in this context. A key observation deriving from the data is that there seems to be a lack of *institutionalised* good practice, with examples of good practice often being *ad hoc* and dependent on individual commitment and effort.

Finally, **Section VII** summarises general research findings, articulates key policy considerations, and presents a set of recommendations for law and policy makers. This includes the questions of whether prisons should become First Responder Organisations, the application of the Public Order Disqualification introduced by the Nationality and Borders Act 2022 (NABA), and the need to improve communication between the prison service and the actors involved in the NRM process.

By studying the experiences and framework governing the treatment of survivors of modern slavery in prisons in the UK, this enquiry considers how the role of a victim of crime is reconciled with that of an offender, and to what extent this dual status affects the rights of such survivors in practice. The analysis aims to show whether, despite equal entitlements to protection in law, survivors of modern slavery in prisons currently have lesser rights in practice. The study furthermore seeks to understand whether survivors of modern slavery in prisons have specific needs and vulnerabilities that warrant *additional* protection and support compared to those outside prisons. It considers whether survivors are at an increased risk of further exploitation, both within prison and after imprisonment, and the extent to which prisons are duty-bound to address any such risk.

By focusing on a subset of modern slavery survivors who have received little attention in the literature and public policy, the research hopes to shed light on the risk of neglecting certain categories of victims – arguably among the most vulnerable ones – which undermines the commitment to universal and unconditional protection of all victims enshrined in international law. It is hoped that this enquiry will encourage similar studies in other jurisdictions.

²⁵ There may be situations where potential victims choose not to be referred to the NRM, or are not eligible for support through the NRM, due to the public order disqualification. Section IV of the report explains that under international law prisons as public authorities have an obligation to identify and protect victims, which does not depend on a formal identification process established in a particular jurisdiction. In other words, prisons continue to be bound by that duty even if other public authorities (i.e. competent authorities) fail to discharge their own responsibility. In practice, this means that prisons should offer support to individuals who they have reasonable grounds to believe to be victims of modern slavery irrespective of the NRM process.

ii. The Scope and Methodology of Research

This research study was conducted between July 2022 and August 2023 with the aim of better understanding whether and how people with lived experience of modern slavery in the UK prison system are identified as survivors, and what kind of support, if any, is offered to them during and after the prison sentence. The research was focused specifically on adult survivors of modern slavery who had been in prison in the UK (England, Wales, Northern Ireland and Scotland) and did not examine the experiences of child survivors of modern slavery who had been in Youth Custody or cases of adult survivors who had been detained in immigration detention but not prison. Furthermore, while highly relevant, the question of non-punishment of survivors of modern slavery enshrined in the relevant international²⁶ and domestic instruments,²⁷ has been briefly referenced in some sections of this report but falls outside of its main focus. Similarly, Section IV discussing the relevant regulatory framework that governs the treatment of the survivors of modern slavery in the UK, and in the prison context in particular, provides a general overview of the way in which this issue has been addressed in comparative jurisdictions, but does not go into greater detail due to the project's geographic focus on the UK.

To build a comprehensive understanding of the approach to identifying and supporting survivors of modern slavery in the UK prison system, this project combined several research methods. First, a desktop analysis of the regulatory framework, existing academic literature, and pertinent studies by International Organisations and Non-Governmental Organisations (NGOs) was conducted. This was combined with empirical research consisting of the interviews with prison staff, legal professionals, and other key actors in this area such those working with support organisations.²⁸ Furthermore, in 2023, the HMPPS published Modern Slavery Guidance for prisons in England and Wales,²⁹ which introduced a role of Single Point of Contact for Modern Slavery (SPOC) in every prison in England and Wales. The research project was the first time SPOCs have been consulted to share their views on the operationalisation of the new guidance and their perception of the presence of modern slavery survivors in prisons. In total, 46 interviews were conducted with participants representing different stakeholder groups³⁰ and 50 out of 117 SPOCs in prisons in England and Wales participated in a survey.

The combination of the survey and semi-structured interviews generated data about the adequacy of relevant policies and practices on identifying and supporting modern slavery survivors in prisons throughout the UK. To ensure that voices and perspectives of survivors of modern slavery who previously experienced imprisonment in the UK were also included, eight interviews and one focus group discussion were conducted with survivors. These interviews and the focus group were facilitated by and conducted in

²⁶ Article 26 of the Council of Europe Convention on Action Against Trafficking in Human Beings.

²⁷ Section 45 of the Modern Slavery Act, Section 22 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, and Section 8 of the Human Trafficking and Exploitation (Scotland) Act 2015.

²⁸ Some of the interview quotes included in this report have been edited for the purpose of readability and clarity, for example by removing filler words or repeated phrases. Content and substance remains unchanged. Where such edits have been made this is marked in the text through the use of [...] and has been noted in all cases.

²⁹ The HMPPS Modern Slavery Guidance was circulated to the staff in October 2022 and made public in January 2023. See HMPPS, 'Modern Slavery Guidance' (2023) which can be accessed here <https://www.gov.uk/government/publications/modern-slavery-guidance>.

³⁰ The breakdown of interviews conducted is as follows: 16 NGOs/support organisations; 15 SPOCs from prison service England and Wales; 5 Solicitors; 2 non-SPOC HMPPS staff England and Wales; 2 Police Officers; 1 Prison Inspectorate staff; 1 Welsh government civil servant; 1 Northern Ireland Prison Service staff; 1 Scotland Prison Service staff; 1 forensic psychologist; and 1 expert witness. An expert witness is a qualified individual who can provide a statement of opinion to the court on any admissible matter calling for expertise by said witness.

collaboration with UK charities supporting marginalised and vulnerable individuals. The focus group and six interviews were conducted in collaboration with Hibiscus Initiatives, an organisation which supports women survivors,³¹ whereas two interviews with male survivors were facilitated by other organisations working with survivors, namely Causeway and ATLEU.³² The findings emerging from the empirical research conducted for this study are qualitative in nature and should be considered indicative. While efforts were made to include a variety of stakeholders representing diverse perspectives, several challenges and limitations that should be kept in mind when interpreting findings were encountered.

- *Accessing research participants:* There were notable challenges in accessing research participants, particularly survivors. Those survivors of modern slavery who participated in the study had not necessarily been in prison within a recent timeframe, meaning that their experiences may not always fully reflect new developments or changing landscapes. In addition, there were challenges related to recruiting an equal number of female and male survivors of modern slavery for participation in the study, whose experiences may differ significantly.
- *Timeline in relation to publication of HMPPS Modern Slavery Guidance:* HMPPS published the Modern Slavery Guidance for prisons in England and Wales in January 2023,³³ establishing also at this time the new Modern Slavery SPOC model. As this research study was conducted shortly after the guidance was released and the SPOC model was implemented, some aspects of the findings may be likely to change or develop as the guidance is properly operationalised.
- *Over-representation of England and Wales:* The overall project, including the interviews conducted with research participants representing different stakeholder groups, covers the entirety of the UK. Guidance on modern slavery in prisons and the SPOC model have only been introduced in the prison system in the jurisdictions of England and Wales, however, with no similar guidance existing for prisons in Scotland or Northern Ireland. It was therefore easier to facilitate recruitment of research participants representing prison staff in England in Wales and the SPOC survey conducted covered only this jurisdiction. This potential overrepresentation of England and Wales should thus be kept in mind when interpreting findings, as each jurisdiction may face its own unique concerns or challenges.
- *Changing regulatory landscape:* With the recent adoption of the NABA 2022 and IMA 2023, non-British nationals sentenced to imprisonment of any length are potentially excluded from protection guaranteed under international and domestic law. This changing regulatory landscape has left the efforts undertaken by HMPPS through the 2023 Modern Slavery Guidance and ongoing work to develop an overarching response for prisons, probation and youth custody service in England and Wales in a state of uncertainty. It remains to be seen how they will be affected by these legal developments.

³¹ For further information on the work done by Hibiscus Initiatives please refer to: <https://hibiscusinitiatives.org.uk/>.

³² These are Causeway: <https://www.wearecauseway.org.uk/> and ATLEU: <https://atleu.org.uk/>

³³ It was published to HMPS staff in October 2022 on the staff intranet.

III. Prevalence of Modern Slavery Survivors in UK Prisons

1. An Overview and Summary of Findings

Data collected during the project suggests that the presence of survivors of modern slavery in prisons is not a rare occurrence. However, due to the lack of official records, any findings from this study remain provisional and extrapolated from the sources that do not directly measure the phenomenon as well as the interviews with relevant stakeholders.

2. Measuring the Unknown: The Number of Modern Slavery Survivors in the UK Prisons

Modern slavery survivors may end up in prison for several reasons. In some cases, this could be due to not being correctly identified as such, which would require a consideration of the non-punishment principle enshrined in Article 26 ECAT and enforced in the UK law through a statutory defence contained in Section 45 of the Modern Slavery Act (MSA) as well as through the exercise of a prosecutorial discretion.³⁴ In other cases, an individual's status of being a survivor may not be deemed to have had a sufficient nexus with their offending behaviour.³⁵

While there is no official data on the number of modern slavery survivors in UK prisons,³⁶ the Government's statistics for 2022 reveal that 'criminal exploitation' was the second most common reported type of exploitation for referrals to the NRM – the UK's framework for identifying and supporting the victims of modern slavery.³⁷ Accordingly, in 41 per cent of all NRM referrals in 2022, 'criminal exploitation' was either recorded as the exclusive form of exploitation or as one of the forms of exploitation experienced by the person being referred. As already noted, survivors of such exploitation can benefit from the non-punishment principle if it can be shown that their offending was related to their status of modern slavery victim.³⁸ There is currently no official data on the number of

³⁴ Jovanović and Niezna (n 8).

³⁵ As noted by the Court of Appeal in *R v L(C), N, N & T* [2013] EWCA Crim 991 at paragraph 33, such nexus represents the extent to which the offences with which a person is charged (or found guilty) are integral to or consequent on the exploitation of which the person was a victim, noting that: 'We cannot be prescriptive. In some cases, the facts will indeed show that he was under levels of compulsion which mean that, in reality, culpability was extinguished... In other cases, ... culpability may be diminished but nevertheless be significant. For these individuals prosecution may well be appropriate, with due allowance to be made in the sentencing decision for their diminished culpability. In yet other cases, the fact that the defendant was a victim of trafficking will provide no more than a colourable excuse for criminality which is unconnected to and does not arise from their victimisation. In such cases an abuse of process submission would fail.' See also *VSJ* [2017] EWCA Crim 36, paragraph 20.

³⁶ The Home Office has previously published some figures regarding NRM referrals for foreign national offenders in remand or custody. While this provides further support to the statement that the presence of survivors of modern slavery in prison is not a fringe concern, these figures also do not amount to a fully developed picture of the scale of this issue. They do not, for example, capture the prevalence of UK nationals who are in prison and have been referred to the NRM. See UK Home Office, 'Research and Analysis, Update on Modern Slavery Referrals from Detention and Prisons, Updated 19 July 2021' (GOV.UK) <<https://www.gov.uk/government/publications/issues-raised-by-people-facing-return-in-immigration-detention/update-on-modern-slavery-referrals-from-detention-and-prisons>>.

³⁷ UK Home Office, 'Official Statistics, Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, End of Year Summary 2022, Published 2 March 2023' (GOV.UK) <<https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2022/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2022>>.

³⁸ MSA s 45; Human Trafficking and Exploitation (Scotland) Act 2015 s 8; Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 s 22.

victims who have made use of this defence, as this is not routinely recorded by the Crown Prosecution Service, police or the courts. The Home Office acknowledged this evidence gap and has 'committed to continuing to work with criminal justice partners to explore how data on the use of section 45 can be captured, to better understand its effectiveness.'³⁹

In addition, there have been numerous legal cases challenging the application of the non-punishment principle in practice in the UK. Many of these cases concern survivors of modern slavery who have been imprisoned for crimes they claim to have been compelled to commit.⁴⁰ These cases indicate that the imprisonment of the survivors of modern slavery is not an isolated incident.

The issue has also been acknowledged by some FROs.⁴¹ For example, a report published by Salvation Army in 2018 stated with regards to its role in delivering the victim care and coordination contract that:

[W]e have experienced barriers to identifying, accessing and facilitating support for potential victims incarcerated within the prison service (detained potential victims). This leads to lengthy delays between referral and detained potential victims coming into our service and can impact on whether a potential victim in the prison service ultimately receives support.⁴²

In addition, His Majesty's Inspectorate of Prisons (HMIP) has started to include references to modern slavery in its reports, though these are neither detailed nor systematic.⁴³ While the HMIP reports do not offer much insight into the prevalence of modern slavery survivors in prisons, they do signal increasing awareness of the issue, which ought to be considered more closely.

At the international level, in June 2023 the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) adopted a new questionnaire for the fourth evaluation round on the implementation of ECAT by the Parties, which includes for the first-time direct reference to identification of modern slavery survivors in prison.⁴⁴ This is further evidence of the need to focus on this issue more carefully.

Despite the emerging initiatives to bring attention to this issue, such as the publication of the HMPPS published Modern Slavery Guidance for prisons in England and Wales in 2023 and the introduction of the role of Modern Slavery SPOC in every prison in England and Wales, it remains difficult to know the precise scale and extent to which

³⁹ Communication from the United Kingdom concerning the case of V.C.L. and A.N. v. the United Kingdom (Application No. 77587/12) Action Plan (10/03/2023).

⁴⁰ Criminal Cases Review Commission, 'Modern Slavery Victim's Drug Conviction Quashed Following CCRC Referral' (27 June 2023) <<https://ccrc.gov.uk/news/modern-slavery-conviction-quashed-mrq/>>.

⁴¹ The Salvation Army, 'Supporting Adult Victims Of Modern Slavery. Year Seven Report on The Salvation Army's Victim Care and Co-Ordination Contract' (2018) <<https://www.salvationarmy.org.uk/sites/default/files/resources/2019-09/Anti-Trafficking%20and%20Modern%20Slavery%20-%20Year%207.pdf>>.

⁴² *ibid.*

⁴³ Of the 316 reports on an unannounced inspection of a prison carried out since 2015 only 37 contain any reference to human trafficking or modern slavery. Only 8 of 253 inspection reports for men's prisons during this time contain any reference to human trafficking or modern slavery compared to 22 out of 24 inspection reports for women's prisons.

⁴⁴ Question 23 of the fourth evaluation round questionnaire asks: 'What measures are taken in your country to identify victims of THB in immigration detention centres and prisons?' GRETA, Council of Europe, 'Questionnaire for the Evaluation of the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties, Fourth Evaluation Round, Thematic Focus: Addressing Vulnerabilities to Trafficking in Human Beings' (n 16).

survivors of modern slavery are present within the UK prison system.⁴⁵ What emerges from this research, however, is a clear indication that this is not a fringe concern affecting only a small number of isolated cases. Significantly, according to the analysis of the available data on UK National Referral Mechanism (NRM) by the IOM UK in the period between January and June 2023, '71% of people disqualified from protection under the National Referral Mechanism because they were a "threat to public order" were referred as a potential victim of criminal exploitation,' which is contrary to the Government's commitment to ensuring that 'those whose criminality is a result of their exploitation are not disqualified from protection.'⁴⁶

As discussed in more detail in Section V of this report, the prison environment may not easily facilitate the identification of potential survivors of modern slavery, and there appears to be a high likelihood of underreporting and missed cases. Such barriers to disclosure and challenges to identification of modern slavery survivors in prison directly impact knowledge about the scale of the issue. The research findings on the prevalence of modern slavery survivors in UK prisons should thus be understood within the context of these numerous barriers and challenges.

3. Findings of the SPOC Survey and Stakeholder Interviews on the Prevalence of Modern Slavery Survivors in UK Prisons

Through the survey conducted for this research project, SPOCs were asked if they were aware of any cases being referred into the NRM while in prison since they had taken on the role of SPOC or whether they were aware of any prisoner having been referred into the NRM before entering prison.⁴⁷

Of the 50 SPOCs who participated in the survey (out of 117 SPOCs in prisons in England and Wales), 20 (40%) reported awareness of at least one prisoner with an NRM referral, either before prison or while in prison. This included 14 SPOCs who reported a referral to the NRM before prison and 11 reported that a referral had taken place in prison since they became SPOC. Of these 20 SPOCs who reported awareness of any NRM referral, there were 5 SPOCs (10%) who reported awareness of both a NRM referral having taken place before a prisoner entered prison and at least one prisoner having been referred into the NRM while in prison since they had taken on the role of SPOC. Of the 30 remaining SPOCs, 29 were reportedly unaware of any prisoner with an NRM referral, made either before prison or while in prison, and 1 SPOC was unsure.

The 14 SPOCs who reported awareness of at least one prisoner having been referred into the NRM prior to being in prison were asked a follow-up question on how they became aware of the prisoner being in the NRM. Their responses varied – there seemed to be no defined system or communication structure in place for ensuring prison

⁴⁵ Important to note here is that while these developments have shed some light on the issue as it relates to prisons in England in Wales, the guidance developed by HMPPS and the SPOC system do not apply to Scotland and Northern Ireland. As such, the issue appears to remain largely invisible in these jurisdictions and could not be included to the same extent within the scope of this research project. For a more detailed discussion on the limitations of this project regarding Scotland and Northern Ireland, please refer to the 'Methodology' Section of this report, section II.

⁴⁶ IOM, 'UK National Referral Mechanism: Data Analysis Briefing No. 7' 2023 Mid-Year Review (January - June).

⁴⁷ It is important to note here that the recall period covered by this question 'since you became a Modern Slavery' SPOC covers only a relatively short amount of time (approximately 6 months). In addition, SPOCs have been established only in England and Wales – as such, the survey was only shared with prisons in these jurisdictions and did not cover prisons in Scotland or Northern Ireland. For more information on these limitations, please refer to the Methodology Section.

staff/SPOCs were made aware of prisoners already in the NRM. Indeed, some SPOCs only became aware once they received a NRM decision letter to serve to the prisoner.⁴⁸

SPOCs were also asked about how they perceived the likelihood of there being potential (unidentified) survivors of modern slavery present in the prison and to rate their confidence in the ability of prison staff to identify survivors. A large proportion of participating SPOCs, 33 (66%), reported a perceived likelihood of greater than 3 out of 5 that there were unidentified survivors of modern slavery present in their prison. Twenty-nine (58%) of participating SPOCs rated the ability of prison staff to identify potential survivors of modern slavery as at least 3 out of 5. It is also important to note that there seemed to be a pattern related to the degree of awareness training SPOCs reported receiving and their knowledge and perception around survivors of modern slavery being present in the prison.⁴⁹

Those SPOCs who reported that they had received training seemed to perceive a higher likelihood of there being potential (unidentified) victims of modern slavery present in the prison. Of the 28 SPOCs who had received training, 22 (79%) reported a perceived likelihood of greater than 3 out of 5 that there were unidentified victims of modern slavery present in their prison. Comparatively, of the 19 SPOCs who had not received any training, 11 (58%) reported the same. Those SPOCs who reported having received more training also appeared to be more confident in the ability of the staff in their prison to identify potential victims of modern slavery. For example, for those 28 SPOCs who reported having received training, development, or learning support 19 (67%) rated the ability of prison staff to identify potential victims at least 3 out of 5 compared to 9 (47%) of those 19 SPOCs who reported not receiving any such training.

The sense that the scale of the issue is likely larger than known was also echoed by several research participants.⁵⁰ They noted that:

I've probably [seen over] a hundred over the last few years and it's increasing exponentially. I think it's really hard to identify the full scale of the problem and so many victims are not being identified as victims. They're serving criminal sentences and being treated as criminal, as offenders.⁵¹

[At this time, I am aware of] two prisoners [out of six hundred] that are, that are under the [NRM referral] process and they've been initially accepted. Well I don't have the data - they're not sharing but I think there should be more than two [that deserve to be recognised].⁵²

This is the first [case] I've had, but I suspect there are many more. I think it's really about just kind of increasing[ly] putting it on the agenda [when] reviewing cases.⁵³

While a research participant working with NIPS could not provide an exact number of referrals that had been made from their prison, they stated that:

I know we have made a number of referrals [...] and I know [...] that the chaplains anecdotally would tell us that a large number of foreign nationals they see claim to have been either enslaved or trafficked.⁵⁴

⁴⁸ For further discussion of these kind of concerns please refer to Section V.

⁴⁹ SPOC Survey.

⁵⁰ Stakeholder Interviews 12 (Forensic Psychologist, England), 26, 27, 33 (HMPPS SPOCs, England).

⁵¹ Stakeholder Interview 12 (Forensic Psychologist, England).

⁵² Stakeholder Interview 26 (HMPPS SPOC, England).

⁵³ Stakeholder Interview 29 (HMPPS SPOC, England).

⁵⁴ Stakeholder Interview 46 (NIPS, Northern Ireland).

This was accompanied by a sense that ‘we are still sort of [...] operating in the dark here without knowing which of our people are indeed victims of [...] human trafficking and slavery.’⁵⁵

Furthermore, increased awareness and skills training for prison staff⁵⁶ around modern slavery was also perceived as crucial for facilitating both identification and support provision by those research participants representing survivors, support organisations, and prison staff.⁵⁷ As noted by one key of them:

[A]bsolutely the first step is to identify the sheer prevalence of victims of trafficking within prisons, and then to be thinking what we can be providing.⁵⁸

The same sentiment was expressed by another research participant who felt that confidently being able to flag everyone in their service who has been through the NRM:

[C]ould inform a more thematic understanding of the challenges and the needs of that particular population, and then how we as an organisation [prison] can work to meet those needs.⁵⁹

These combined findings of the SPOC survey and stakeholder interviews⁶⁰ cannot be translated into exact facts and figures around the prevalence of survivors of modern slavery in prisons. Nevertheless, several important conclusions can be derived.

- More than one-third of participating SPOCs had direct knowledge of at least one prisoner in their prison having been referred to the NRM either before entering prison or while in prison.⁶¹ For those referrals that took place prior to an individual entering prison, there seemed to be no systematic approach towards this information being communicated to the prison.
- An even greater proportion of participating SPOCs, two-thirds, felt there was a likelihood of greater than three out of five that there were unidentified potential survivors of modern slavery present in their prison. This supports the sense that this issue remains underreported and faced with complex barriers towards disclosure and identification, discussed in greater details in Section V, survivors may remain unidentified in prison.
- Those SPOCs who received more training and awareness/capacity development seemed to report a higher likelihood of unidentified survivors being present in the prison.

Accordingly, the number of potential survivors of modern slavery in prison could only be ascertained if the prison administration kept disaggregated records of:

- The number of individuals who were referred from prisons to FROs and any NRM decisions made while individuals were in prison.

⁵⁵ Stakeholder Interview 46 (NIPS, Northern Ireland).

⁵⁶ Not only for SPOCs, but prison staff across different functions and roles – including reception staff, medical staff, chaplaincy etc. See SPOC Survey and Stakeholder Interview 16 (NGO, England).

⁵⁷ SPOC Survey; Stakeholder Interviews 05 (NGO, Northern Ireland), 19, 20 (NGOs, Scotland), 22 (Police, England), 24 (Expert witness, England), 28 (HMPPS SPOC, Wales), and 29, 31, 32 (HMPPS SPOCs, England).

⁵⁸ Stakeholder Interview 12 (Forensic Psychologist, England).

⁵⁹ Stakeholder Interview 43 (HMPPS, England).

⁶⁰ Which also included interviews conducted with SPOCs.

⁶¹ In some cases, multiple.

- The number of individuals whom the prison staff considered to be potential victims of modern slavery (had reasonable grounds to believe they were victims) but who refused an interview with the FRO.⁶²

⁶² Section 52 of the Modern Slavery Act 2015 imposes on public authorities in England and Wales, including prisons, a 'Duty to Notify' the Secretary of State when encountering a potential victim of Modern Slavery. In practice, this is discharged by informing the Home Office. See UK 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 3.5, updated 9 October 2023 (n 13).

IV. Legal and Policy Framework on the Protection of Survivors of Modern Slavery and Human Trafficking in Prisons in the UK

1. An Overview and Summary of Findings

This section provides an overview of international and domestic law governing the identification and protection of survivors of modern slavery and human trafficking in prisons in the UK. It emphasizes that prisons, like any public authority, have an obligation to identify and protect victims or potential victims, stemming directly from international law binding on the UK. The section reveals that, until recently, domestic legal framework giving effect to international rules has not specifically focused on the role and responsibility of prisons. This is not uncommon. Comparative review of other domestic jurisdictions reveals that most states do not provide specific and detailed guidance to prisons. Accordingly, the 2023 HMPPS Modern Slavery Guidance for prisons and ongoing efforts to develop further overarching HMPPS guidance for Prisons, Probation and Youth Custody service in England and Wales represent a unique attempt to address this issue in a comprehensive way.

These efforts are nonetheless overshadowed by the adoption of the NABA and the IMA which exclude non-British nationals convicted to prison sentence of any length from protection guaranteed under international and domestic law.⁶³ At the time of writing, these new rules on victim identification and protection have been subject to legal challenges and it remains to be seen how these developments will affect the ongoing work on the HMPPS Modern Slavery Guidance and any potential work on developing similar policy and guidance for the prison services in Scotland and Northern Ireland.⁶⁴

It is nonetheless of critical importance to acknowledge that international instruments binding on the UK establish an obligation for prisons, as well as other public authorities in the UK, to identify and protect *all* victims of modern slavery irrespective of whether the NRM assigns them a formal role in this process. They ought to do so even in situations when victims have committed criminal offences, because international obligations do not provide a basis for excluding such individuals from protection. The only situation when states would be justified in denying protection is when a person has claimed the victim status illegitimately.

Accordingly, in the absence of their formal role within the NRM, prisons could and should establish procedures for individuals who do not seek, or are prevented from accessing NRM support, to ensure that survivors are properly identified, supported and protected by HMPPS. This approach would be cognisant of the obligations under international and domestic law, notably the European Convention on Human Rights, which is part of the British law by virtue of the Human Rights Act 1998, and the Council of Europe Convention Against Trafficking in Human Beings, which apply to prisons.

⁶³ NABA 2022 s 63 (3) (f); IMA 2023 s 29.

⁶⁴ *VAN v SSHD CO/792/2023* and *LAN v SSHD CO/1940/2023*. Matrix Chambers, 'High Court Orders No Public Order Disqualifications of Slavery Victims May Take Place without a Risk Assessment Pending Trial' (27 July 2023) <<https://www.matrixlaw.co.uk/news/high-courts-orders-no-public-order-disqualifications-of-slavery-victims-may-take-place-without-a-risk-assessment-pending-trial/>>. See also Duncan Lewis, 'Secretary of State Concedes Public Order Disqualification Decision for the Second Time' (9 June 2023). A further hearing into the legality of the policy is due to be heard at the end of October 2023.

2. International Law on Identification and Protection of Survivors of Modern Slavery and Human Trafficking

International law binding in the UK, most notably the ECHR and ECAT,⁶⁵ mandates states to identify and protect victims or potential victims of human trafficking.⁶⁶ Protection measures required by Article 4 ECHR include ‘facilitating the identification of victims by qualified persons and assisting victims in their physical, psychological and social recovery.’⁶⁷ Importantly, even when an individual is not a victim of exploitation in a specific ECHR Member State, all State Parties are under a positive obligation to identify and support any potential victim – not just those exploited in the country in which they are discovered.⁶⁸

This obligation is triggered by a ‘credible suspicion’ (reasonable grounds to believe) that a person is a victim of modern slavery.⁶⁹ Notably, it does not depend on a victim’s report – ‘the authorities must act of their own motion once the matter has come to their attention.’⁷⁰ However, if an individual does raise a claim of being a victim of modern slavery, the European Court of Human Rights (ECtHR) requires that such claims ‘as a whole [are]taken seriously’.⁷¹

The prohibition of slavery and forced labour in Article 4 is one of the four unqualified and non-derogable rights in the ECHR.⁷² This means that even in situations of extreme crisis (‘in time of war or other public emergency threatening the life of the nation’ (Article 15(1) ECHR)) states are not permitted to limit, modify, or suspend their obligations arising out of such ‘absolute’ rights in pursuit of any competing public interests. Accordingly, the obligation to protect victims or potential victims of modern slavery is only circumscribed by what is reasonably possible to expect from authorities in given circumstances. The appropriate measures required from national authorities must be within the scope of their powers and must not be interpreted to impose ‘an impossible or disproportionate burden’

⁶⁵ When explaining and elaborating the obligations imposed by Article 4 ECHR which prohibits slavery, servitude, forced labour, and human trafficking, the ECtHR draws heavily on the provisions of ECAT. See *Rantsev v Cyprus and Russia*, Application No 25965/04, Judgment of 7 January 2010 [285]; *Chowdury and Others v Greece*, Application No 21884/15, Judgment of 30 March 2017 [110]; *J and Others v Austria*, Application No 58216/12, Judgment of 17 January 2017 [106].

⁶⁶ ECHR art 4; ECAT arts 10, 12, and 13. For a discussion of positive obligations arising out of the ECHR and ECAT respectively, see Marija Jovanović, *State Responsibility for ‘Modern Slavery’ in Human Rights Law: A Right Not to Be Trafficked* (First edition, Oxford University Press 2023); Jovanović, ‘Legal Analysis of the Human Rights Compatibility of the Modern Slavery Clauses in the Illegal Migration Bill (Clauses 21-28)’ (n 20).

⁶⁷ *VCL and AN v the United Kingdom* (n 11) para 153. See also *Chowdury and Others v Greece* (n 65) para 110.

⁶⁸ *J and Others v Austria* (n 65) paras 110–111. This is important to emphasise because of the statement by the UK Minister for Immigration Robert Jenrick from 11 July 2023, where he noted that the Government might exempt from automatic removal from the UK those potential victims of modern slavery who arrived in the UK ‘illegally’ if exploitation took place in the UK. See ‘Illegal Migration Bill, UK Parliament, House of Commons Debate, Volume 736: Debated on Tuesday 11 July 2023’ col 207

<<https://hansard.parliament.uk/commons/2023-07-11/debates/5D96460C-A67B-4782-B74B-89BDD8ACE51A/IllegalMigrationBill>>. This means that victims who are exploited overseas will continue to be denied protection.

⁶⁹ ECtHR, Guide on Article 4 of the European Convention on Human Rights - Prohibition of slavery and forced labour, updated on 31 August 2022 paras 60 and 69. See also *VCL and AN v the United Kingdom* (n 11) para 152; *Rantsev v Cyprus and Russia*, Application No. 25965/04, Judgment of 7 January 2010 (n 65) paras 286 and 288; *CN v the United Kingdom*, 4239/08, Judgment of 13 November 2012; *SM v Croatia*, Application no 60561/14, Grand Chamber judgement 25 June 2020 [307].

⁷⁰ ECtHR Guide on Article 4 ECHR (n 69) paras 60 and 69. *CN v the United Kingdom*, 4239/08, Judgment of 13 November 2012 (n 69) para 69; *Chowdury and Others v Greece* (n 65) para 116; *J and Others v Austria* (n 65) para 107; *Zoletic and Others v Azerbaijan*, Application no 20116/12, Judgement of 7 October 2021 [185].

⁷¹ *J and Others v Austria* (n 65) paras 110–111.

⁷² These are: the right to life (Article 2 ECHR); the prohibition of torture and inhuman or degrading treatment (Article 3 ECHR), the prohibition of slavery and servitude (Article 4 ECHR), and the prohibition on retrospective criminal law (Article 7 ECHR).

on them⁷³ and is not qualified by other competing goals, such as public interest. What is more, this applies to all victims or potential victims without discrimination.⁷⁴

In addition to protection available to formally identified victims, which is elaborated in more detail in Article 12 ECAT, Article 13 (1) ECAT guarantees to any *potential* victim – someone whom the authorities have ‘reasonable grounds to believe’ to be a victim – a reflection and recovery period ‘of at least 30 days’ during which they cannot be removed from the state where they are discovered and during which they are entitled to assistance and support measures explained above. The goal of this period is to allow a potential victim ‘to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities’.⁷⁵ While the reflection and recovery period is available to *any* potential victim, it is primarily established to prevent the expulsion of victims who are ‘illegally present’ in the territory of a member state before they can be formally recognised as victims by the relevant authorities.⁷⁶ ECAT and its Explanatory Report use mandatory language when referring to assistance and support available to victims during the reflection and recovery period. For example, the Explanatory Report refers to the assistance measures which states ‘must provide’ for trafficking victims and which victims are ‘entitled to’,⁷⁷ emphasizing that the required assistance measures are minimum ones.⁷⁸ Neither of these measures depend on the victims’ willingness to cooperate with authorities nor on their immigration status.

Article 13 (3) ECAT allows States not to observe the recovery and reflection period ‘if grounds of public order prevent it or if it is found that victim status is being claimed improperly’. The purpose of the exception is clear: ‘to guarantee that victims’ status will not be illegitimately used.’⁷⁹ However, the scope of that exception must be interpreted in the context of the purpose of Article 13 as a whole, as well as the overarching purpose of ECAT to ‘protect the human rights of the victims of trafficking’. As the Explanatory Report makes clear, one of the main purposes of the recovery and reflection period is to ensure protection for victims of trafficking who are also ‘illegally present’ in a State’s territory and therefore vulnerable to being removed. Accordingly, any exceptions to the duty to provide for a reflection and recovery period must be narrowly construed in a way which does not defeat the very purpose of the protection. As noted by GRETA, an expert group tasked with monitoring the implementation of the ECAT, ‘the grounds of public order should always be interpreted on a case-by-case basis (...) [and] are intended to apply in very exceptional circumstances and cannot be used by States Parties to circumvent their obligation to provide access to the recovery and reflection period.’⁸⁰

When it comes to survivors of modern slavery who have committed criminal offences, the non-punishment principle enshrined in Article 26 ECAT and a number of other international instruments, as well as in British law,⁸¹ requires states to provide for the possibility of not prosecuting or punishing victims of human trafficking for their involvement in unlawful activities when such an involvement had a ‘relevant nexus’ with

⁷³ *Zoletic and Others v Azerbaijan* (n 70) para 188; *J and Others v Austria* (n 65) para 107; *CN v the United Kingdom*, 4239/08, Judgment of 13 November 2012 (n 69) para 68; *Rantsev v Cyprus and Russia*, Application No. 25965/04, Judgment of 7 January 2010 (n 65) para 287; *Osman v The United Kingdom*, 1998–VIII 3124 [116].

⁷⁴ ECAT art 3; ECHR art 14.

⁷⁵ Council of Europe, ‘Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings’ (2005) 197 para 175.

⁷⁶ *ibid* 172.

⁷⁷ *ibid* 146–147 and 149.

⁷⁸ *ibid* 151.

⁷⁹ *ibid* 173.

⁸⁰ GRETA, Council of Europe, ‘Written Evidence Submitted to the Joint Committee on Human Rights, Legislative Scrutiny: Illegal Migration Bill (IMB0024)’ (n 21).

⁸¹ MSA s 45; Human Trafficking and Exploitation (Scotland) Act 2015 s 8; Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 s 22.

their experience of being trafficked.⁸² As such, it is meant to strengthen the victim protection responsibilities of states. However, while this provision does not provide immunity from prosecution, punishment, or even imprisonment of victims/ survivors of modern slavery, sentencing them to prison does not disqualify them from the victim status and other protection which is guaranteed to *any* victim.

International framework on human trafficking does not expressly refer to prisons. However, in June 2023, GRETA adopted a new questionnaire for the fourth evaluation round on the implementation of ECAT by the Parties, which includes for the first-time direct reference to identification of modern slavery survivors in prison. Question 23 of the fourth evaluation round questionnaire asks: ‘What measures are taken in your country to identify victims of [trafficking in human beings] THB in immigration detention centres and prisons?’⁸³ It remains to be seen how GRETA will engage with provided answers and the extent to which its reports will offer guidance to States on developing the role of prisons in tackling modern slavery. Moreover, it should be noted that its third evaluation report for the UK, GRETA had made reference to responses in prisons by noting that ‘insufficient attention is being given to the issue of trafficking among the prison population’ but did not elaborate any further on what sufficient attention would entail.⁸⁴ It also mentioned that ‘prison officers are not First Responders and they need clear guidance and training in this respect’,⁸⁵ while failing to acknowledge that there is currently no international guidance on the adequate role of prisons in identifying and supporting victims. Accordingly, GRETA’s evaluation report does not offer any concrete instruction on how responsibilities of prisons in the UK could be discharged.

When it comes to general human rights law, the rights of prisoners have been discussed extensively by the ECtHR⁸⁶ and other international bodies.⁸⁷ The ECtHR has developed abundant case-law determining the nature and scope of prisoners’ rights under the ECHR and the duties of the domestic authorities as regards the treatment of prisoners. Moreover, the 2005 Manual on Human Rights Training for Prison Officials, published by the Office of the UN High Commissioner for Human Rights, notes that: ‘prison officials are at the forefront of human rights protection on a daily basis, experiencing them and putting them into practice; respecting them and enforcing their respect.’⁸⁸ In fact, it is often argued that prisons have a ‘heightened duty of protection’. For instance, a statement from the former Special Rapporteur on Extrajudicial Killings explains that:

With respect to the obligation to ensure rights, the controlled character of the custodial environment also permits States to take unusually effective and comprehensive measures to prevent abuses by private persons. Moreover, by

⁸² For a discussion of the nature of such ‘relevant nexus’, see Jovanović and Niezna (n 8); Jovanović (n 8); Piotrowicz and Sorrentino (n 8).

⁸³ GRETA, Council of Europe, ‘Questionnaire for the Evaluation of the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties, Fourth Evaluation Round, Thematic Focus: Addressing Vulnerabilities to Trafficking in Human Beings’ (n 16).

⁸⁴ GRETA, Council of Europe, ‘Evaluation Report United Kingdom, Third Evaluation Round, Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings’ (2021) para 172 <<https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>>.

⁸⁵ *ibid* 265.

⁸⁶ ECtHR, Guide on the case-law of the European Convention on Human Rights - Prisoners’ rights, updated on 31 August 2022.

⁸⁷ See also Piet Hein van Kempen, ‘Positive Obligations to Ensure the Human Rights of Prisoners: Safety, Healthcare, Conjugal Visits and the Possibility of Founding a Family Under the ICCPR, the ECHR, the ACHR and the AfChHPR’ in Peter JP Tak and Manon Jendly (eds), *Prison policy and prisoners’ rights: The protection of prisoners’ fundamental rights in international and domestic law* (Wolf Legal Publishers 2008).

⁸⁸ Office of the United Nations High Commissioner for Human Rights, ‘Human Rights and Prisons - Manual on Human Rights Training for Prison Officials’ (2005) 11 <<https://www.ohchr.org/sites/default/files/Documents/Publications/training11en.pdf>>.

severely limiting inmates' freedom of movement and capacity for self-defence, the State assumes a heightened duty of protection.⁸⁹

The ECtHR has similarly affirmed that 'persons in custody are in a vulnerable position and authorities have a duty to protect them'.⁹⁰ It emphasized that imprisonment does not lead to a loss of the rights guaranteed under the ECHR.⁹¹ To the contrary, the ECtHR has taken the stance that in certain cases, an imprisoned person may need enhanced protection due to the vulnerability of their situation and because they are entirely under the responsibility of the State.⁹²

Still, when it comes to Article 4 ECHR (prohibition of slavery, servitude, modern slavery, and human trafficking), the ECHR case law has focused solely on the rights of working prisoners and has not addressed the issue of positive obligations of prisons towards survivors of modern slavery and human trafficking. Notwithstanding this lacuna in the ECHR jurisprudence, there is little doubt that the ECHR obligations apply to all public authorities,⁹³ which means that positive obligations arising out of Article 4 ECHR, especially an obligation to identify and protect every victim of human trafficking and modern slavery, equally apply to prisons. Therefore, in the context of obligations arising out of Article 3 ECHR, the ECtHR noted that 'it has been the Court's constant approach that Article 3 imposes on States a duty to protect the physical well-being of persons who find themselves in a vulnerable position by virtue of being within the control of the authorities, such as, for instance, detainees or conscripted servicemen'.⁹⁴ Prisons are expressly bound by 'positive obligation to adequately secure the physical and psychological integrity and well-being of [prisoners]'.⁹⁵

Accordingly, prisons are under an obligation to identify and protect those prisoners who are, or are at risk of, being subject to human trafficking and exploitation.

3. Domestic Law and Policy on Identification and Protection of Survivors of Modern Slavery and Human Trafficking in the UK

The UK has given effect to its international obligations pertaining to modern slavery through the Modern Slavery Act 2015 that applies in England and Wales, Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, and Human Trafficking and Exploitation (Scotland) Act 2015.⁹⁶ These pieces of legislation are accompanied by the Modern Slavery Statutory Guidance on identifying and supporting victims of modern slavery for professionals and public authorities who may encounter potential victims of modern slavery, and/or who are

⁸⁹ UN General Assembly, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 5 September 2006, UN Doc A/61/311 para 51.

⁹⁰ ECtHR Guide on the case-law of the European Convention on Human Rights - Prisoners' rights, updated on 31 August 2022 (n 86).

⁹¹ *Paul and Audrey Edwards v the United Kingdom*, 46477/99, Judgment of 14 March 2002 [56].

⁹² *Florea v Romania*, Application No 37186/03, Judgment of 14 September 2010 [50].

⁹³ Office of the United Nations High Commissioner for Human Rights (n 88) para 24. See also Equality and Human Rights Commission, 'Who Does the Human Rights Act Apply To?'

<<https://www.equalityhumanrights.com/en/advice-and-guidance/who-does-human-rights-act-apply#:~:text=The%20Act%20applies%20to%3A,or%20private%2C%20performing%20public%20functions>>; Citizens advice, 'Who's Breaching Your Human Rights?' <<http://www.citizensadvice.org.uk/law-and-courts/civil-rights/human-rights/who-s-breaching-your-human-rights/>>.

⁹⁴ *Premninny v Russia*, Application no 44973/04, Judgement of 20 June 2011 [73].

⁹⁵ *ibid* 90.

⁹⁶ For a good overview of the criminal justice system in the UK see Akash Paun and Kelly Shuttleworth, 'Criminal Justice and Devolution' (*Institute for Government*, 7 April 2020)

<<https://www.instituteforgovernment.org.uk/article/explainer/criminal-justice-and-devolution>>.

involved in supporting victims.⁹⁷ Such guidance has been continuously updated and represents a blueprint for the victim identification process in the UK.⁹⁸

One of the hallmarks of this regime is the NRM, a mechanism designed to identify and support survivors of modern slavery.⁹⁹ To comply with the obligation to identify and support potential and confirmed victims of human trafficking, the UK's NRM established a two-tiered system comprising the reasonable grounds decision (RG decision) and conclusive grounds decision (CG decision).

These decisions are made either by the Single Competent Authority (SCA) or the Immigration Enforcement Competent Authority (IECA). The decision-making process taken by the SCA and IECA is the same. According to the Statutory Guidance from July 2023, a positive RG decision is made when there are reasonable grounds to believe that an individual is a victim of slavery or human trafficking. The standard of proof for a RG decision is lower than the one used for a CG decision, which is decided on the balance of probabilities. Accordingly, the test used for a CG decision is whether, 'on the balance of probabilities', there are sufficient grounds to decide that the individual being considered is a victim of human trafficking or slavery, servitude, and forced or compulsory labour. While this threshold is higher than the reasonable grounds test, it is lower than the criminal standard of proof.

Following a positive RG decision, an adult victim is entitled to Government-funded support through the Modern Slavery Victim Care Contract (MSVCC), which includes accommodation, material assistance, financial support, translation and interpretation services, information and advice, as well as to access to legal aid for immigration advice, medical care and counselling, and assistance to return to their home country if not a UK national.¹⁰⁰ Such support continues following a positive CG decision and can be withdrawn only after conducting Recovery Needs Assessment (RNA) but no sooner than 45 calendar days following a positive CG decision.¹⁰¹

RG and CG decisions are made following a referral to the NRM by one of the designated FROs.¹⁰² At present, prisons are not assigned a role of FRO. The Modern Slavery Statutory Guidance nonetheless stipulates that prisons 'have responsibility for identifying and supporting victims [of modern slavery] and raising awareness of this crime amongst

⁹⁷ UK 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 3.5*, updated 9 October 2023 (n 13).

⁹⁸ There is furthermore Guidance from the Crown Prosecution Service for public prosecutors in England and Wales for situations where suspects in criminal cases are suspected of being victims of modern slavery: The Crown Prosecution Service, 'Modern Slavery, Human Trafficking and Smuggling, Legal Guidance, International and Organised Crime, Updated 6 July 2022' <<https://www.cps.gov.uk/legal-guidance/modern-slavery-human-trafficking-and-smuggling>>. Similar guidance has been embedded in the Lord Advocate's instructions to prosecutors in Scotland and in the Policy for Prosecuting Cases of Modern Slavery and Human Trafficking in Northern Ireland: 'Lord Advocate's Instructions for Non-Prosecution of Victims of Human Trafficking, Last Updated 25 August 2021' (*Crown Office & Procurator Fiscal Service*) <<https://www.copfs.gov.uk/publications/lord-advocate-s-instructions-non-prosecution-of-victims-of-human-trafficking/>>; 'Policy for Prosecuting Cases of Modern Slavery and Human Trafficking' (*Public Prosecution Service for Northern Ireland*, 26 May 2022) <https://www.ppsni.gov.uk/publications/policy-prosecuting-cases-modern-slavery-and-human-trafficking>.

⁹⁹ The NRM existed from 2009 but the adoption of the MSA 2015 has put it on a statutory footing. See: UK Home Office, *Guidance National referral mechanism: adult (England and Wales)*, updated 21 September 2023.

¹⁰⁰ UK 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 3.5*, updated 9 October 2023 (n 13), section 8 and Annexe F.

¹⁰¹ *ibid* 8.27.

¹⁰² UK Home Office *Guidance National referral mechanism: adult (England and Wales)*, updated 21 September 2023 (n 99) s 4.

prisoners/individuals in detention and staff'.¹⁰³ Despite this express reference, the Modern Slavery Statutory Guidance does not further elaborate the role of prisons in identifying and supporting survivors of modern slavery and human trafficking.¹⁰⁴

In 2022, following a judicial review initiated by ATLEU,¹⁰⁵ HMPPS developed a Modern Slavery Guidance for Prisons in England and Wales¹⁰⁶ and started working on an overarching guidance for Prisons, Probation, and Youth Custody Service, discussed in more detail below. It is however important to emphasize that no similar initiatives currently exist in Scotland and Northern Ireland.

The developments towards a better identification and support of survivors of modern slavery in prisons have been overshadowed by legislation adopted in 2022 and 2023 respectively. Notably, NABA created, in Section 63, a public order disqualification for those individuals who are not British nationals and are sentenced to imprisonment of at least 12 months.¹⁰⁷ IMA then extended this disqualification to those sentenced to *any* term of imprisonment and further disqualifies from protection anyone who has arrived in the UK 'illegally'.¹⁰⁸ Furthermore, it is significant to note that the most recent iteration of the Statutory Guidance from 9 October 2023 acknowledges the need for an individualised assessment emphasized by GRETA and explains that '[t]he public order disqualification will be applied on a case-by-case basis' and that '[t]his decision should take into account whether the need for modern slavery specific support outweighs the threat to public order.' Notwithstanding this apparent exclusion of the blanket application of the public order disqualification, the starting point in this assessment is a presumption that a person fulfilling conditions from Section 63 (3) (b) and (f) NABA is a threat to public order, which he or she needs to disprove. Therefore, paragraph 14.256 of the Statutory Guidance stipulates that:

The starting point is that an individual who meets the public order definition is a threat to public order. The decision maker must then consider, on the evidence available, whether the individual's need for modern slavery specific protections outweighs the threat to public order posed by the individual. There is a high bar for the need for modern slavery protections or support to outweigh the threat to public order with more weight given to the public interest in disqualification.

If this approach is taken when the IMA modern slavery provisions are operationalised, it would mean that anyone sentenced to imprisonment or anyone 'liable to deportation from the United Kingdom under any provision of, or made under, any other enactment that provides for such deportation' would be automatically presumed a threat to public order, which they then need to refute, often in a limited timeframe afforded. The onus would therefore be on a victim, or presumed victim, to prove their protection needs, and not on the Government to justify the exclusion from protection. This is contrary to international law binding on the UK which requires that any exceptions from the

¹⁰³ UK 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 3.5, updated 9 October 2023 (n 13) para 4.32. See also paras 12.69 and 12.70.

¹⁰⁴ Modern Slavery Statutory Guidance contains provisions on accommodation for victims seeking bail from HM Prison in paras 15.26–15.29.

¹⁰⁵ *R (ATLEU and QW) v Secretary of State for Justice*, Claim Nos CO/3171/2021, CO/3107/2021, 6 July 2022.

¹⁰⁶ HMPPS Modern Slavery Guidance for prisons in England and Wales, Version 1.4 (n 17).

¹⁰⁷ For the analysis of the available data on public order disqualification decisions in the period between January and June 2023, see IOM, 'UK National Referral Mechanism: Data Analysis Briefing No. 7' 2023 Mid-Year Review (January - June).

¹⁰⁸ At the time of writing, these provisions of the IMA have not yet commenced. For a discussion of these provisions, see Jovanović and Niezna (n 8); Marija Jovanović, 'Legal Analysis of the Human Rights Compatibility of the Modern Slavery Sections in the Illegal Migration Act (Sections 22-29)' (Modern Slavery PEC 2023).

mandatory recover and reflection period and resulting protection are narrow and expressly justified.

It is therefore unsurprising that these developments have been heavily criticised by domestic and international experts and institutions¹⁰⁹ and have been subject to ongoing legal challenges.¹¹⁰

Significantly, while NABA¹¹¹ and IMA¹¹² provide a legal basis for excluding from protection non-British nationals, the Modern Slavery Statutory Guidance appears to expand disqualification to *anyone* convicted of criminal offence. Thus, the Modern Slavery Statutory Guidance states in para 14.234 that:

Disqualification requests can be raised by Competent Authorities where:

- a British citizen is in detention or on licence and is being referred into the NRM; or
- a British citizen has presented with challenging behaviours in modern slavery support, and it has been identified by the competent authority that the individual meets the public order definition under S63(3) (b).

This would therefore exclude from protection through the NRM anyone serving a prison sentence and potentially make ongoing efforts of HMPPS to improve identification and protection of modern slavery survivors in prisons futile.

As already noted, neither NABA nor IMA provide grounds for excluding from protection British nationals. The IMA applies to 'persons who enter or arrive in the United Kingdom in breach of immigration control',¹¹³ while Section 63 (2) NABA states the following consequences for a person being considered a threat to public order:

Where this subsection applies to a person the following cease to apply—

- a) any prohibition on removing the person from, or requiring them to leave, the United Kingdom arising under section 61 or 62, and
- b) any requirement under section 65 to grant the person limited leave to remain in the United Kingdom.

It is clear that prohibition on removing a person from the UK or providing them a limited leave to remain could only apply with respect to someone who is *not* a British national and the exclusion from the NRM is a consequence of that person being subject to a removal.

However, even if such disqualification only applied to non-British nationals, this would violate Article 3 ECAT and Article 14 ECHR, which guarantee non-discrimination in the enjoyment of human rights. Article 3 ECAT requires that the implementation of the provisions of this Convention by Parties, 'in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured without discrimination on any ground including national origin.' Distinguishing between British and non-British survivors of modern slavery would thus create a two-tiered system of protection in breach of international law.

¹⁰⁹ House of Commons, House of Lords, Joint Committee on Human Rights, 'Legislative Scrutiny: Illegal Migration Bill' Twelfth Report of Session 2022–23 (6 June 2023).

¹¹⁰ Matrix Chambers (n 64).

¹¹¹ NABA 2022 s 63.

¹¹² IMA 2023 ss 22–25, 28 and 29.

¹¹³ *ibid* 1 (1). See also *ibid* 2 (2).

According to the recent statistics published by the Government, it is notable that the rate of positive RG decisions made by two competent authorities – the IECA, which makes decisions in cases of certain foreign nationals, and the SCA, which is in charge of making decisions for everyone else, including child cases, differ markedly.¹¹⁴ Thus, from April to June 2023, 61% (1,685) of RG decisions made by the SCA were positive whereas only 6% (54) of RG decisions made by the IECA were positive.¹¹⁵ This illustrates an increasing bifurcation of the UK's modern slavery regime where non British nationals seem to be increasingly excluded from protection guaranteed to all victims of modern slavery by international law. At the time of writing, the effect of these provisions on the ongoing work of the HMPPS to develop a comprehensive policy on identification and support of modern slavery survivors in prisons and probation remains unclear.

4. The UK Framework for Identification and Protection of Survivors of Modern Slavery and Human Trafficking in Prisons

The Modern Slavery Statutory Guidance, which governs the victim identification process in all devolved jurisdictions, expressly refers to 'responsibility [of prisons] for identifying and supporting victims [of modern slavery]'. However, specific guidance for discharging such a duty has only been developed in England and Wales. In addition to Modern Slavery Guidance for Prisons in England and Wales from 2022, HMPPS has been working on an overarching Modern Slavery Guidance for Prisons, Probation, and Youth Custody Service to be published in 2024. It will include not just guidance on dealing with protection of prisoners who are survivors of modern slavery, but also those prisoners who are perpetrators of modern slavery offences.

The HMPPS Modern Slavery Guidance expressly acknowledges 'a legal duty' of HMPPS to identify and support survivors of modern slavery in prisons. It emphasizes that despite not being a FRO, HMPPS 'must alert a FRO of all suspected cases of modern slavery' and provides a list of indicators of modern slavery to enable its staff to discharge this obligation. The HMPPS Modern Slavery Guidance thus instructs HMPPS staff to be 'professionally curious and alert to signs of modern slavery when engaging with prisoners.' Moreover, this Guidance mandates prisons to 'designate a competent person as a point of contact for modern slavery' and to 'ensure that FROs are facilitated to complete referrals to the NRM.' It furthermore expressly notes that [a]ll potential and confirmed victims (...) should be given access to legal and other support services as contained in the following guidance.'

The specific instruction to prison staff who encounter potential victims of modern slavery is worth stating in full. Thus, the HMPPS Modern Slavery Guidance maintains that they 'should' do the following:

- Discuss concerns with the individual using an interpreter, if English is not their first language.
- Have conversations in a safe space and be patient, as the individual is likely to have difficulties in disclosing.
- Gather as much information as possible to convey to the FRO.

¹¹⁴ UK Home Office, 'Official Statistics, Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, Quarter 2 2023 – April to June, Published 10 August 2023' (*GOV.UK*) <<https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-april-to-june-2023/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-2-2023-april-to-june>> accessed 19 October 2023.

¹¹⁵ *ibid*, data tables 17 and 18.

- A victim may not realise they are a victim until the process of exploration begins.
- Record on NOMIS.¹¹⁶

It furthermore asks prisons to ensure that:

- A referral to Healthcare is made at this stage (stating the reason for the referral).
- The FRO is provided with the details of the prison's competent designated person to liaise with the FRO.
- The FRO's interview with the potential victim is prioritised and facilitated efficiently, making use of available methods including using video link, visits hall, phone calls, iPads/Teams and ensuring official translation services or other adaptations are used and organised as necessary.
- All relevant prison departments are made aware of the referral, including Security and Safety teams where relevant.

The Guidance specifically emphasizes the importance of a 'trauma informed approach' when conducting interviews or speaking with a modern slavery potential or confirmed victim and asking sensitive questions. These requirements correspond to obligations contained in Articles 10 and 12 ECAT, and if adequately discharged, would make practices in prisons in England and Wales compliant with international law.

There are parts of the HMPPS Modern Slavery Guidance however that fall foul of the international standards. For example, it is stated that '[e]mergency support is provided if requested pre-RG decision'. Similarly, the Guidance instructs staff in prisons to conduct '[t]he Modern Slavery Prisoner Needs Assessment (...) within 5 calendar days of receiving a positive RG or CG decision by a competent designated member of staff.'¹¹⁷ According to Articles 10 (2) and 12 (1) and (2) ECAT, as well as Article 4 ECHR, assistance and support should be provided from the moment there are reasonable grounds to believe ('credible suspicion') that an individual is a victim of modern slavery, without the need to wait for a formal decision to that effect or a request by a person in question. Therefore, it is of utmost importance to clarify in the Guidance when the needs assessment is to be completed and how it relates to the formal NRM process. International standards mandate this to be done as soon as a relevant public authority (prison) has reasonable grounds to believe that a person is victim.

The HMPPS Modern Slavery Guidance furthermore requires that '[a]ccess to legal advice should be offered and facilitated within 7 calendar days upon receipt of a positive or negative RG or CG decision.' According to Article 12 (1) (d), authorities are obliged to offer 'counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand' as soon as there are 'reasonable grounds to believe that a person has been victim of trafficking in human beings'. It is clear that this obligation too does not depend on the outcome of the formal victim identification process, which may take a considerable amount of time.¹¹⁸

¹¹⁶ The National Offender Management Information System (NOMIS) is an operational database used in prisons for the management of offenders. It contains the offender's personal details, information about their offense and custody, case notes, disciplinary information, and a record of their visits.

¹¹⁷ At another place, the Guidance mentions that prisoner needs assessment is to be completed '[f]ollowing reporting suspected modern slavery to a FRO' and '[a]s soon as possible following arrival into prison where a prisoner is identified as a potential victim of modern slavery or after receiving a positive RG or CG decision' making it unclear when the prisoner needs assessment ought to be done.

¹¹⁸ According to the UK Government's data, the average (median) time taken from referral to conclusive grounds decisions made in January to March 2023 across the competent authorities was 566 days. See UK Home Office (2023) 'Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 1 2023 – January to March.

The HMPPS Modern Slavery Guidance also instructs prison staff to record '[a]ll information, actions and referrals [...] on NOMIS case notes, and information shared between relevant prison departments as needed.' This is an important step to ensure that every member of staff who comes into contact with potential or confirmed survivors of modern slavery is aware of support needs of a particular person and their responsibilities to provide the required support and protection. It would be preferable to keep the record of all referrals and corresponding decisions in order to generate data about the prevalence and support needs of prisoners who may be survivors of modern slavery.

Finally, the HMPPS Modern Slavery Guidance contains instructions concerning bail, transfer, and release of prisoners. These provisions are comprehensive and consider the need to ensure communication and information sharing between everyone involved in these proceedings in order to continue to provide the required assistance and support to potential or confirmed survivors of modern slavery ('so appropriate arrangements can be put in place to adhere to the Prisoner Needs Assessment and safety of the prisoner'). The Guidance rightly acknowledges that:

Release of potential and confirmed victims of modern slavery needs extra planning to ensure they are not released back to the control of their potential trafficker/perpetrator particularly if the proposed release address is their last known address and there is a serious risk of being re-trafficked/re-victimised. Other risks include, further exploitation, homelessness, their economic vulnerability on return, problems in accessing employment and/or social services, the stigma/shame associated with being a victim, and unpaid debts to traffickers/illegal moneylenders.

A referral to The Salvation Army (where the potential or confirmed victim of modern slavery gives their consent) for ongoing assessment of their ongoing needs and to determine eligibility for MSVCC support should be actioned. It is important that release arrangements are co-ordinated with The Salvation Army who are the prime contract holder of the MSVCC.

However, as indicated in our findings in Section III, the approach outlined in the HMPPS Modern Slavery Guidance has not always been followed in practice. This may well be due to the fact that the Guidance is still relatively recent and has not been fully operationalised across the prison service in England and Wales. Awareness and training sessions, envisaged in the Guidance, need to be provided to all staff. Finally, it must be acknowledged that the provision of specialist support to potential and confirmed survivors of modern slavery requires additional resources, and it would be difficult for prisons to provide the level of service required without receiving adequate funding and human resources.

5. Comparative State Practice on Identification and Protection of Survivors of Modern Slavery and Human Trafficking in Prisons

Comparative review of other domestic jurisdictions reveals that most states do not provide specific and detailed guidance to prisons on how to identify and protect survivors of modern slavery or publish data on their numbers. A review of practice in all Council of Europe Member States as well as the US¹¹⁹ reveals that while there are some efforts to identify and support survivors of modern slavery in immigration detention, national action plans to combat modern slavery or human trafficking in most jurisdictions do not address

¹¹⁹ Research consulted available sources in English, French, German, and Italian.

the identification or support of survivors of modern slavery in prisons. Exceptions are Italy, Austria, and the US.

In two annexes to Italy's National action plan against trafficking and severe exploitation 2022-2025 (*Piano nazionale d'azione contro la tratta e il grave sfruttamento 2022-2025*), prisons and prison staff are mentioned with regards to potential first contact with potential survivors of modern slavery and their referral to the relevant first reporting centres.¹²⁰ However, available documents suggest that there is no comprehensive strategy to support such identification efforts or increase awareness among prison staff.

In 2016, Austria issued new information and guidelines for the identification of potential victims of *child* trafficking under the National Referral Mechanism.¹²¹ These provide orientation for prison guards (*Justizwache*) and authorities on how to deal with potential cases of survivors of child trafficking and mention that prison guards are 'obliged to report suspicions of child trafficking'.¹²² The guidelines also refers to the importance of cooperation with, *inter alia*, prison authorities 'due to their duties and legal obligations in the context of identifying victims of child trafficking'.¹²³ Comparable guidelines do not exist for adult survivors of modern slavery/human trafficking.

The US National Action Plan to Combat Human Trafficking from December 2021 mentions that the Senior Policy Operating Group will convene an interagency working group, including the Federal Bureau of Prisons (BOP), 'to develop best practices in implementing screening forms and protocols as relevant for all federal officials who have the potential to encounter a human trafficking victim in the course of their regular duties'¹²⁴. The US furthermore recognised in its National Action Plan the threat of potential re-trafficking as it mentions that '[f]ederal prison personnel will be trained on identifying human trafficking and traffickers' recruitment efforts.'¹²⁵ Furthermore, the National Action Plan stipulates that BOP and other law enforcement agencies 'shall designate a victim coordinator responsible for ensuring the agency implements training, policy, and identification efforts.'¹²⁶ The US National Strategy to Combat Human Trafficking from January 2022 also mentions that 'BOP will add training for institution staff who may interact with inmate victims of human trafficking on applying a victim-centred, trauma-informed, and culturally-responsive approach.'¹²⁷ However, there is no separate comprehensive strategy or guidance for BOP with regards to modern slavery or human trafficking.

¹²⁰ Italy Council of Ministers, Allegato 1, Meccanismo Nazionale di Referral per le Persone Trafficate in Italia, Piano nazionale d'azione contro la tratta e il grave sfruttamento degli esseri umani 2022-2025, adopted by the Council of Ministers at its meeting on 19 October 2022 5–6 and 15; Italy Council of Ministers, Allegato 2, Linee guida per la definizione di un meccanismo di rapida identificazione delle vittime di tratta e grave sfruttamento, Piano nazionale d'azione contro la tratta e il grave sfruttamento degli esseri umani 2022-2025, adopted by the Council of Ministers at its meeting on 19 October 2022 3.

¹²¹ Austria Federal Ministry for Family Affairs and Youth and Task Force Menschenhandel Österreich, 'Handlungsorientierungen Zur Identifizierung von Und Zum Umgang Mit Potenziellen Opfern von Kinderhandel, Information Und Arbeitsgrundlage' <https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Menschenrechte/Handlungsorientierungen_zur_Identifizierung_und_zum_Umgang_mit_potenziel...pdf>; Austria Federal Ministry for Family Affairs and Youth and Task Force Menschenhandel Österreich, 'National Referral Mechanism on Identifying and Working with Potential Victims of Child Trafficking, Information and Practical Guidelines' <https://www.bundeskanzleramt.gv.at/dam/jcr:0e04d869-b92c-449b-8557-0642a7d99795/National_Referral_Mechanism.pdf>.

¹²² Austria Federal Ministry for Family Affairs and Youth and Task Force Menschenhandel Österreich (n 121) 21.

¹²³ *ibid* 13.

¹²⁴ The US National Action Plan to Combat Human Trafficking 2021 27.

¹²⁵ *ibid* 29.

¹²⁶ *ibid* 34.

¹²⁷ US Department of Justice, US National Strategy to Combat Human Trafficking 2022 19.

These examples show that even in countries where prisons have been identified as potential places to identify and support survivors of modern slavery, frameworks and approaches are less comprehensive than the one currently developed in the UK, embodied in the HMPPS Modern Slavery Guidance for prisons in England and Wales and the initiative to develop an overarching HMPPS policy for prison, probation, and youth custody service.

V. Challenges in Identifying and Supporting Survivors of Modern Slavery in Practice

1. An Overview and Summary of Findings

The Modern Slavery Statutory Guidance explains that prisons and immigration removal centres 'have responsibility for identifying and supporting victims and raising awareness of this crime amongst prisoners/individuals in detention and staff.'¹²⁸ The HMPPS Modern Slavery Guidance for prisons in England and Wales outlines in more detail how prisons should support potential and confirmed victims. However, the research identified a number of challenges in key areas of practice pertaining to the identification and support of victims of modern slavery in prison. Three such key areas are considered: identification of survivors of modern slavery and their referral to the NRM from prisons; provision of adequate support and assistance to survivors of modern slavery in prisons; and practices concerning bail and release of survivors of modern slavery from prisons.

While the adoption of the HMPPS Modern Slavery Guidance represents an important step towards a greater consideration of the support needs of victims in prisons in England and Wales, and research also found examples of good practice with regards to victim identification and support, discussed further in section VI, empirical data suggests that prisons are a difficult environment for an individual to recover from the trauma caused by the experience of modern slavery. Due to the nature of the prison environment, prisons are unable to provide the same level of assistance and support that are available to those survivors who are in the community. However, as noted in Section IV, prisons, like other public authorities, are duty bound to comply with protective obligations arising out of the international and domestic legal framework in a way which is compatible with their distinct role and function.

2. Identification of Potential and Confirmed Victims of Modern Slavery in Prisons in the UK

The research has identified a number of barriers which prevent prisons and individual prison staff from discharging their responsibilities towards potential and confirmed victims of modern slavery in practice. For instance, prisons are often not informed by the Home Office or competent authority that a prisoner is a potential or confirmed victim. Research furthermore reveals that prison staff sometimes do not have sufficient awareness about modern slavery to identify someone as a potential victim of modern slavery. They may also not be aware of the barriers for victims to disclose information which indicates that they are a victim. Finally, empirical findings suggest that because of their reliance on other FROs to make the referral, prisons can be delayed or prevented in facilitating a referral of a potential victim to be the NRM and accessing support offered through this mechanism.

a) Challenges with identifying victims of modern slavery in prison due to prisons not being informed about individuals referred to the NRM before they entered prison

There is currently no policy or systematic approach for the Home Office, competent authorities, or FROs to share information with prisons that a new prisoner has been

¹²⁸ UK 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 3.5, updated 9 October 2023 (n 13) para 4.32.

referred to the NRM or the outcome of their RG or CG decision. As a result, prisons are frequently not receiving such information in practice. SPOCs interviewed for this research acknowledged that they often did not have any information which details that a new prisoner had been referred to the NRM or what NRM decisions they may have received. One of them noted that 'if someone's been referred in the past, again, we're kept in the dark.'¹²⁹

SPOCs highlighted the importance of the prison service receiving information about a new prisoner being a potential or confirmed victim of modern slavery so they can provide the support they are able to offer such persons. They noted that 'they should be identified before they come through the door really, to make it easier for everybody, and then they can put in the support while they're here'.¹³⁰

Other research participants working for HMPPS similarly referred to the lack of information sharing:

[W]e've all got computer systems, not [all] of them talk to each other, so how do we make sure that (...) what is sitting on a police system specifically in relation to an NRM for example, how does that then come across to a probation or prison computer system?¹³¹

A research participant working with the Northern Ireland Prison Service (NIPS) also highlighted the lack of systematic approach to information sharing and explained that:

Information tends to be passed quite informally, the immigration officers would tend [...] to speak with staff when they're on their visits [...] to the prisons, and likewise, our relationship with police is that information is passing back and forth all the time, I should say, not just on this. But [...] we have again police officers based on the prisons who would make that known to the security teams, I mean they [...] work hand in hand [...] this would just be an issue that [...] would come up in conversation.¹³²

In the absence of such information sharing, it may be the prisoners themselves who first alert prison staff to the fact that they are in the NRM. Such circumstances were described by SPOCs.¹³³ One of the scenarios where this may happen is when a foreign national prisoner wants to withdraw a NRM claim so they can become eligible for the Facilitated Return Scheme¹³⁴ to return to their country of origin more quickly. A SPOC explained:

[T]he majority of men that I have been dealing with, I believe the modern slavery claim has been done prior to custody (...) in a lot of the cases with the Albanians, I didn't even know they had a modern slavery claim until they asked to withdraw it.¹³⁵

¹²⁹ Stakeholder Interview 26 (HMPPS SPOC, England).

¹³⁰ Stakeholder Interview 37 (HMPPS SPOC, England).

¹³¹ Stakeholder Interview 43 (HMPPS, England).

¹³² Stakeholder Interview 46 (NIPS, Northern Ireland).

¹³³ Stakeholder Interview 28 (HMPPS SPOC, Wales); SPOC Survey.

¹³⁴ Guidance on the Facilitated Return Scheme explains, 'The Facilitated Return Scheme (FRS) was established on 12th October 2006 to make the early removal of foreign national offenders (FNOs) to their country of origin easier. The primary aim of the scheme is to encourage FNOs to leave the UK at the earliest possible opportunity,' UK Home Office, Guidance on the Facilitated Return Scheme (FRS), Version 11.0, published for Home Office staff on 07 August 2023 5.

¹³⁵ Stakeholder Interview 28 (HMPPS SPOC, Wales).

The lack of information sharing with HMPPS that a new prisoner is a potential or confirmed victim appears to be in stark contrast with usual practices for information sharing with HMPPS for other safeguarding issues for new prisoners. SPOCs described the types of information they would receive about other issues and compared this to a lack of information about potential or confirmed victims of modern slavery:

[W]e would know if someone was a care leaver, we would know if someone was self-harming, well, well before they come in (...) if they've been seen by mental health, if they've got issues, or if they need outside agency support. We would have all of that. But at the moment when they're coming into us, we don't have that information that they are a modern-day slavery person.¹³⁶

The lack of information sharing may result in prison staff using time and resources to try and identify and then refer potential victims of modern slavery who have already been referred to the NRM. Some of the research participants described cases where prisoners had informed prison staff that they believed themselves to be a victim of modern slavery and gave consent to be referred to the NRM where it was subsequently realised that they had been referred before entering prison and, in some cases, had received negative decisions. The following statements by NGO staff seconded to the police and SPOCs illustrate these challenges:

[T]here was one case where a prison officer came to me and said 'can you have a look at this case, this guy has come to me and he's saying he's a victim of modern slavery', so when I looked at his case I realised he's already in the NRM, and it was a negative decision, so I went back and said 'look, speak to him, if he wants to get the decision reconsidered, we can assist him with that.'¹³⁷

[A]t the minute, all we're being told is yes, it was referred by [police force] and she was found not to be a victim, so for me, I'm saying (...) we need that confirmation, so that we can actually say it's been addressed, otherwise we'll start from scratch.¹³⁸

The Home Office has a privacy information notice regarding people who have been referred to the NRM which outlines how they will use and share personal data.¹³⁹ This document explains that '[Home Office] may pass your personal information to other teams within the Home Office or other Government departments so that they can carry out their functions.'¹⁴⁰ There is nothing in the privacy information notice which appears to prevent sharing information with HMPPS (or SPS and NIPS) for the purpose of providing support victims of modern slavery as required by the Modern Slavery Statutory Guidance or HMPPS Modern Slavery Guidance. To the contrary, the current absence of information sharing about the NRM status of new prisoners will inhibit prison services in the UK from fulfilling their responsibilities.

Despite these challenges, research has identified examples of good practice on information sharing and victim identification discussed further in section VI.

¹³⁶ Stakeholder Interview 37 (HMPPS SPOC, England).

¹³⁷ Stakeholder Interview 41 (NGO staff currently seconded to a police force, Wales). The research participant continued to explain that they would notify the prisoner of that decision and that they would discuss with them whether they would want to make a reconsideration request to appeal the negative decision.

¹³⁸ Stakeholder Interview 33 (HMPPS SPOC, England).

¹³⁹ UK Home Office, Guidance, Privacy information notice: national referral mechanism (accessible version), updated 21 September 2023.

¹⁴⁰ *ibid.*

Recommendation:

It is recommended that the Home Office develops a systematic approach to sharing information with the UK's prison services about individuals entering the prison who have been referred to the NRM. Prisons should also be automatically notified by the competent authority of any NRM decisions which have been made for persons in prison.

It is recommended that prison administration in all devolved jurisdictions in the UK should keep records of prisoners who are referred to the NRM and/or identified as victims of modern slavery while being in prison, as well as those potential victims who are not formally referred to the NRM. Communication among different prison departments and record keeping about referrals and identified survivors should be improved and systematised.

b) Challenges with identifying victims of modern slavery in prison due to lack of awareness and barriers to disclosure

Survivors of modern slavery in prison who were not recognised as a potential victim or referred to the NRM prior to entering prison include people who were unable to disclose information that could have led them to being recognised as potential victims by professionals and statutory organisations they encountered. The section 'victims who are reluctant to self-identify' in the Modern Slavery Statutory Guidance outlines many of the reasons people do not disclose or self-identify. Some of the examples include; distrust of authorities, stigma and fear of reprisals.¹⁴¹

Survivors interviewed for this study noted that previous negative experiences with authorities and a perception that they would be met with disbelief and distrust represented a significant barrier for disclosure.¹⁴² This sentiment is illustrated by the following statements:

'[W]hen I was inside no one wanted to listen, for so long no one wanted to listen, for so many years I was too scared to talk'¹⁴³

'You're just seen as a prisoner. For them you're a criminal - you serve your sentence, and then you go. There's not a system put into place to really understand.'¹⁴⁴

Prison staff themselves also referred to a lack of mutual trust. Both a distrust of survivors in authorities due to previous negative experiences and a biased perception among some prison staff that the potential survivors might be lying were noted as potentially negatively impacting disclosure and identification.¹⁴⁵ Prison staff also indicated a lack of awareness around modern slavery primarily stemming from a lack of training,¹⁴⁶ as well as a lack of resources and capacity¹⁴⁷ as challenges that might be hindering identification of potential survivors of modern slavery present in their prison.

¹⁴¹ UK 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 3.5, updated 9 October 2023 (n 13) para 13.10-13.11.

¹⁴² Survivor Interviews 02 and 03.

¹⁴³ Survivor Interview 04.

¹⁴⁴ Survivor Interview 04.

¹⁴⁵ Stakeholder Interviews 26, 31, 32 (HMPPS SPOCs, England).

¹⁴⁶ Stakeholder Interviews 27, 31, 32 (HMPPS SPOCs, England).

¹⁴⁷ SPOC Survey.

Therefore, the objective of identifying those potential victims in prison or enabling them to disclose their experiences when they may not have done so with any other professionals previously will be particularly challenging.¹⁴⁸

Furthermore, survivors of modern slavery who participated in this study noted that it was difficult for them to open up to public authorities within the criminal justice system, including prison staff, due to a lack of opportunities for disclosure.¹⁴⁹ These sentiments were echoed by research participants working for support organisations,¹⁵⁰ who highlighted barriers to disclosure in prison related to a lack of safe or private environment.¹⁵¹

While the adoption and continuing implementation of the HMPPS Modern Slavery Guidance is hoped to lessen these challenges, by increasing awareness and sensitivity of prison staff to the characteristics and needs of modern slavery survivors, these challenges may nonetheless persist in prisons in Scotland and Northern Ireland in the absence of similar guidance for staff.. Despite this, there are still individual officers who may have awareness and knowledge about identifying potential survivors of modern slavery. A solicitor in Scotland mentioned an equality and diversity officer at a prison in Scotland who had contacted them with concerns about a number of potential survivors in their prison and the need for training for prison staff to improve their capacity to identify potential survivors in prison.¹⁵² Moreover, an interviewee from a NGO in Scotland explained how their organisation had done some ad-hoc work with Scottish prisons related to identifying potential survivors.¹⁵³

Much of the focus in HMPPS Modern Slavery Guidance and practice on identifying potential victims of modern slavery is on improving the awareness of both staff and prisoners of the issue of modern slavery, and encouraging survivors to disclose this to staff. The Guidance thus includes the list of common indicators of modern slavery noting that '[a]ll staff working in prisons should be professionally curious and alert to signs of modern slavery when engaging with prisoners.' It recommends staff to ask the question: 'Have you been referred to National Referral Mechanism (NRM)?'¹⁵⁴ One of the SPOCs interviewed for the research explained that:

[W]hen they first come in they go through an induction, and in that induction we've added in there, do you believe you're a victim of modern slavery, have you got an NRM currently going through, because some people might not know that they're a victim of modern slavery, but if they have an NRM going through they will know they've got that, so that's why we've added that question.¹⁵⁵

As previously emphasised, information about those prisoners who are already in the NRM should be communicated to prisons by the relevant authorities. When it comes to potential victims of modern slavery who have never been referred to the NRM, asking if they have been referred to the NRM may be a subtler and more considerate approach to determining their status than asking directly if they had been a victim of modern slavery. However, a problem with this approach is that it depends upon such individuals being aware that they have been referred to the NRM. Despite the requirement that all adults

¹⁴⁸ It should also be acknowledged that victims of modern slavery may have disclosed experiences to professionals within and outside the criminal justice system before they were sent to prison which could have been recognised and responded to accordingly by those professionals.

¹⁴⁹ Survivor Interview 05.

¹⁵⁰ Stakeholder Interview 05 (NGO, Northern Ireland) and 14 (NGO, England).

¹⁵¹ Stakeholder Interview 18 (NGO, England).

¹⁵² Stakeholder Interview 08 (Solicitor, Scotland).

¹⁵³ Stakeholder Interview 11 (NGO, Scotland).

¹⁵⁴ HMPPS Modern Slavery Guidance for prisons in England and Wales, Version 1.4 (n 17) 5.

¹⁵⁵ Stakeholder Interview 31, 32 (HMPPS SPOC, England).

should give informed consent to such a referral, it is apparent from this and other research¹⁵⁶ that many people will be unaware that they have been referred to the NRM or understand its importance.

Some of the survivors who were interviewed for this research who had been referred to the NRM, had received RG and CG decisions, as well as government funded support and assistance, also conveyed a lack of understanding about the NRM. One survivor explained that ‘the only interview I’ve done for the trafficking was with the police. I never done anything with NRM directly.’¹⁵⁷

Similarly, other practitioners involved in this research described how survivors they work with sometimes have little awareness about the NRM or that they were referred. They noted that ‘victims themselves might not realise that they’re in the NRM, if they don’t understand the process’¹⁵⁸ and we’ve had victims that are in the NRM that don’t understand what it is.’¹⁵⁹ A solicitor with experience of supporting survivors of modern slavery in prison who had been referred to the NRM described how ‘a lot of the time we will be the first people to tell them about the existence of the NRM.’¹⁶⁰

The HMPPS Modern Slavery Guidance includes questions for staff to consider in order to identify potential survivors, such as ‘have you been made to do something against your will, or something that you did not want to do by someone else?’. However, SPOCs interviewed for this research spoke of the examples of much more direct questioning to identify potential survivors. One of them described how the induction process for prisoners could involve asking a person directly whether they are a victim of modern slavery:

Do you consider yourself to be a victim? It’s literally a tick box. Do you consider yourself to be a victim of slavery, modern day, modern slavery, and if they were to answer yes, the officer knows they need to put in a safeguarding referral.¹⁶¹

A survivor interviewed for the research who was imprisoned after being criminally exploited expressed concern that such a direct questioning would be ‘very, very triggering (...) how are you going to come to someone and ask them have you been exploited, have you been trafficked? (...) do they even know what exploited or trafficked is?’¹⁶²

There was also a recognition from some SPOCs of the potential barriers for prisoners to recognise themselves as a ‘victim of modern slavery’ given the focus on victimhood and vulnerability. Most notably, one SPOC explained the reactions of a group of prisoners they had recently worked with:

[W]e did a session on county lines with the young adult’s unit. One of the guys actually said, ‘you know, we don’t see ourselves to be victims’, and nobody wants to put themselves to be vulnerable. You know, if you’ve got that label you are essentially saying that I’m vulnerable and someone’s exploited me.¹⁶³

¹⁵⁶ Samantha Currie and Matthew Young, ‘Access to Legal Advice and Representation for Survivors of Modern Slavery’ (Modern Slavery PEC 2021).

¹⁵⁷ Survivor Interview 02.

¹⁵⁸ Stakeholder Interview 41 (NGO staff currently seconded to a police force, Wales).

¹⁵⁹ Stakeholder Interview 22 (Police, England).

¹⁶⁰ Stakeholder Interview 25 (Solicitor, England).

¹⁶¹ Stakeholder Interview 35 (HMPPS SPOC, England).

¹⁶² Survivor Interview 08.

¹⁶³ Stakeholder Interview 31, 32 (HMPPS SPOC, England).

The research nonetheless also identified some examples of good practice in this respect, which are further discussed in Section VI.

Recommendation:

Prison administration in all devolved jurisdictions in the UK should (continue to) develop and conduct training and awareness raising campaigns targeted at both prison staff and prisoners. Survivors of modern slavery with experience of being in prison in the UK and organisations working with survivors should have the opportunity to contribute to the design and delivery of training and awareness raising about modern slavery and the responses required by prisons. This should be coupled with efforts to improve the screening process and strengthen the knowledge of prison staff on the signs of modern slavery.

Prison administration in all devolved jurisdictions in the UK should ensure that awareness raising material and information about support available to survivors of modern slavery in prison is accessible, non-stigmatising and available in multiple languages. Other opportunities to raise awareness among prisoners should be explored (i.e. adverts on prison radios).

Resources designed to help prison staff identify potential victims which list indicators of modern slavery should be reviewed and updated to ensure their relevance in the prison context and should be framed in a language that avoids triggering survivors and has the potential to facilitate disclosure.

Asking prisoners about their experiences of modern slavery and/or any referral to the NRM should be done using appropriate safeguards by staff who are appropriately trained and understand a trauma-informed approach to survivors human trafficking. Any questions about their modern slavery experiences should be done in private.

c) Challenges with identifying victims of modern slavery in prison due to the UK's prison services not being a First Responder Organisation

The research reveals that delays in potential victims being referred to the NRM and the circumstances in which NRM referrals are made can affect the outcomes of NRM decisions. Delayed referrals are likely to result in delayed access to support and assistance and could have negative impacts on decisions within the criminal justice system for people facing trial for offences linked to their status as a victim of trafficking.

As already noted in Section IV, none of the prison services in the UK are a designated FRO.¹⁶⁴ This affects the possibility of victims of modern slavery identified in prison being referred to the NRM in a reasonable time. Currently if prison staff think that a prisoner is a potential victim they will need to alert a FRO, typically the police or an NGO, to make the referral. This reliance on external agencies to refer prisoners into the NRM is particularly challenging given the limited capacity of many FRO's to make NRM referrals

¹⁶⁴ The consent order for the MOJ's response to ATLEU's JR published in July 2022 noted that the MOJ would 'consider whether HMPPS staff should be designated a first responder, to enable it to make direct referrals to the National Referral Mechanism,' *R (ATLEU and QW) v Secretary of State for Justice*, Claim Nos CO/3171/2021, CO/3107/2021, 6 July 2022 (n 105).

in general.¹⁶⁵ In early 2023, the Salvation Army temporarily suspended making referrals of potential victims because of a lack of capacity.¹⁶⁶

SPOCs highlighted the difficulties and delays which come from relying on external FROs:

[S]ome external body, external time constraints versus obviously prison constraints, so getting someone down to visit, booking the visit (...) you're waiting for them, and so you're delaying any immediate action, and as we know people can disengage from stuff, and you're almost potentially increasing anxiety, and engagement with the service, by prolonging the inevitable, and then having to relive trauma [...] you have to tell your story yet again to another individual that you do not know, when you've actually, you've opened up, you've been identified, it's someone that you know.¹⁶⁷

One of the SPOCs interviewed for the research described potential challenges of relying on external organisations to make NRM referrals for prisoners and significant delays in the process of identifying and supporting such individuals.¹⁶⁸ They described how in January 2023 they first asked a police officer based in the prison to make a referral for a prisoner. However, the individual officer did not make the referral.¹⁶⁹ The SPOC then sought to have a non-governmental FRO visit the prison to make the referral but that did not happen either. The SPOC resorted to phoning 101 (the non-emergency police telephone number) for assistance and eventually in March 2023 a police officer interviewed the man to make the NRM referral.

Despite not having a role of a FRO, the prison services of the UK have an important role in enabling a First Responder to make a referral and ensuring that potential victims can safely disclose the sensitive and personal information that they will need to share to receive a positive RG or CG decision.

The HMPPS Modern Slavery Guidance explains how prisons should support FROs to make the NRM referral. It explains that prisons should ensure that a 'FRO's interview with the potential victim is prioritised and facilitated efficiently, making use of available methods including using video link, visits hall, phone calls, iPads/Teams and ensuring official translation services or other adaptations are used and organised as necessary.'

In practice, this means that referrals are made based on the information that a victim in prison was able to communicate during a telephone call with someone they have never met. The Salvation Army can travel to prisons to meet face-to-face with an individual to be able to refer them to the NRM but they cannot be expected to be available for face-to-face referrals in all prisons across England and Wales. Moreover, as already noted earlier in this section, their existing capacities have not always been able to meet the

¹⁶⁵ In February 2023, Kalayaan published a briefing entitled 'The National Referral Mechanism: Near Breaking Point' which described the 'pressing need for an increase in the numbers of First Responder Organisations, together with the requisite resources,' Avril Sharp, 'The National Referral Mechanism: Near Breaking Point' (Kalayaan 2023) <http://www.kalayaan.org.uk/wp-content/uploads/2023/02/KALAYAAN_REPORT_UPDATED20FEB-2.0.pdf>.

¹⁶⁶ Diane Taylor, 'Modern Slavery Survivors Could Be Retrafficked in UK, Charities Warn | Human Trafficking | The Guardian' *The Guardian* (13 February 2023) <<https://www.theguardian.com/law/2023/feb/13/modern-slavery-survivors-could-be-retrafficked-in-uk-charities-warn>>.

¹⁶⁷ Stakeholder Interview 39 (HMPPS SPOC, England).

¹⁶⁸ Stakeholder Interview 29 (HMPPS SPOC, England).

¹⁶⁹ The reason provided by the research participant explaining why the referral was ultimately not made by the police officer was somewhat unclear, but appeared to be primarily linked to confusion over the chain of responsibility and who should ultimately communicate/liaise with the First Responder to make the referral, Stakeholder Interview 29 (HMPPS SPOC, England).

demand. The HMPPS Modern Slavery Guidance specifically mentions the use of a prison's 'visits hall' as one of the methods available for a FRO to interview a potential victim, but these are public spaces where many other prisoners and visitors would be present. The Guidance does not explicitly state that such interviews should be conducted in private whereas there is an explicit reference to ensuring that paperwork relating to an NRM decision is shared in a 'private, safe setting' and a modern slavery prisoner needs assessment being conducted in a 'setting that is private.' One interviewee from a FRO who had completed NRM referral interviews in prison highlighted that it had not always been possible to conduct these in a private space:

[W]e should actually go into a private room. That's not always possible if the prison doesn't have that facility (...) it's in a big room (...) you have a table within that room but obviously it means other people are aware of what is going on, which is not good for the victims. They often fear who might be listening to their conversation. Particularly we've had it where there's been the perpetrator is in the same prison as the victim.¹⁷⁰

The way in which a conversation with a potential victim of modern slavery is conducted and who they speak to is important. Given that the competent authority can only make a decision based on the information that is provided to them, it is of utmost importance that a person has the best opportunity to share with a First Responder as much pertinent information as possible. If the circumstances in which the conversation is conducted impedes their ability to disclose relevant information they may receive a negative decision when they otherwise could have received a positive decision.

Furthermore, delayed referrals could have profound consequences for prisoners who are on remand where an NRM decision could be an important factor in their ability to benefit from the non-punishment provisions that are available in England and Wales, Scotland and Northern Ireland.¹⁷¹ One SPOC described a lengthy delay in getting a prisoner referred to the NRM and acknowledged that 'there would have been a decision by now (...) he's on remand for a drug offence (...) this decision possibly could be used towards his court case.'¹⁷²

Delayed referrals to the NRM may also mean victims have to wait longer to have the possibility of being identified and supported through the NRM while in prison. This however does not mean that such individuals are not offered assistance through the existing support within the prison estate. The Guidance should clearly explain such available support outside the NRM.

Given that there is no similar guidance on modern slavery for SPS and NIPS, it is unclear how those prison services would expect to practically support such referrals. However, one interviewee from an NGO in Scotland did describe their experience of having gone into prisons in Scotland to make NRM referrals which suggested an ad-hoc approach to facilitating interviews with prisoners to enable an NRM referral. They highlighted a particular challenge in having enough time to do the interviews to collect information to make the referral:

[I]f we asked the prison I'm not quite finished, can I have some more time, yes, sometimes they would allow you more time and you are able to complete your

¹⁷⁰ Stakeholder Interview 18 (NGO, England).

¹⁷¹ MSA s 45; Human Trafficking and Exploitation (Scotland) Act 2015 s 8; Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 s 22.

¹⁷² Stakeholder Interview 29 (HMPPS SPOC, England).

NRM. But most times, you're pushed for time, you've only got 20 minutes, half an hour, 45 minutes, and you're rushed out the door.¹⁷³

Recommendations:

It is recommended that the Home Office considers designating HMPPS/NIPS/SPS as First Responder Organisations (FROs) to be able to directly refer potential victims of modern slavery to the NRM *alongside* existing FROs currently making referrals in the prison context. Designated prison staff should receive continuous training to make such referrals.

The HMPPS Modern Slavery Guidance should be updated to highlight the need to ensure that there is sufficient time for FRO interviews and require that such interviews are done in private.

3. Support and Assistance Available to Survivors of Modern Slavery in Prison

While the Modern Slavery Statutory Guidance acknowledges that '[p]risons and immigration removal centres – have responsibility for identifying and supporting victims,¹⁷⁴ it does not elaborate in more detail the kind of support that should be provided in these environments. The Statutory Guidance refers to the HMPPS Modern Slavery Guidance as a resource which explains 'the support that is available to victims in prison.' However, the Modern Slavery Statutory Guidance, which is statutory for England and Wales and non-statutory for Scotland and Northern Ireland, does not signpost to any guidance or resources which outline the support for victims in Scotland or Northern Ireland. As a result, there is currently no clarity about how victims in prisons in those jurisdictions are supported. One research participant from the SPS acknowledged there was no specific instruction for prison staff on how to identify and support survivors of modern slavery in Scottish prisons and that if a person was suspected of being a victim, they would be they would be dealt by to in accordance with guidance and policy covering FNOs, vulnerable prisoners and safeguarding.¹⁷⁵

According to the HMPPS Modern Slavery Guidance for prisons in England and Wales, a prisoner who receives a positive RG decision should have an assessment of their support needs by prison staff using the HMPPS modern slavery 'Prisoner Needs Assessment' document. That document explains that '[p]articular protections and support are afforded to potential and confirmed victims of Modern Slavery in accordance with the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT)'. Relevant ECAT provisions include appropriate and secure accommodation, psychological and material assistance, access to emergency medical treatment; translation and interpretation services, counselling and information regarding legal rights and available services.¹⁷⁶

¹⁷³ Stakeholder Interviews 19, 20 (NGOs, Scotland).

¹⁷⁴ UK 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 3.5, updated 9 October 2023 (n 13) para 4.32.

¹⁷⁵ Stakeholder Interview 40 (SPS, Scotland).

¹⁷⁶ ECAT art 12.1. Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least: a standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance; b access to emergency medical treatment; c translation and interpretation services, when appropriate; d counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand; e

While such an express reference to ECAT and specific obligations pertaining to assistance and support of victims of modern slavery in prisons is commendable, it is important to ensure that the HMPPS Modern Slavery Guidance is implemented consistently across prison service in England and Wales. It is also important to acknowledge the limitations in the capacity of prisons to respond to any significant or complex needs that are identified through an assessment. There is little doubt that prisons can never provide the same level of assistance and support that are available to those survivors who are in the community due to the nature of the prison environment. Ultimately, the empirical data collected through this research suggests that prisons are a difficult environment for an individual to recover from the trauma caused by the experience of modern slavery. However, as noted in Section IV, prisons, like other public authorities, are duty bound to comply with protective obligations arising out of the international and domestic legal framework in a way which is compatible with their distinct role and function. The following are some of the key challenges with providing support and assistance to survivors of modern slavery in prisons following their identification

a) Different nature of support available to survivors in the community through Modern Slavery Victim Care Contract (MSVCC) and in prisons

A key challenge in responding to identified needs of survivors of modern slavery in prisons in England and Wales is the fact that they cannot receive support services through the Home Office funded MSVCC, which is managed by the Salvation Army and its sub-contractors. Instead of receiving such support, the HMPPS Modern Slavery Guidance notes that ‘where a potential or confirmed victim is within a prison, the *existing services* within the establishment will provide access to support services as required.’¹⁷⁷ Also, the Home Office’s Service Description for the MSVCC states that:

Where a Service User is within a prison or immigration removal centre (IRC) the existing services within the prison and IRC will provide the Service User with access to support services as required. *The Supplier is not required to support Service Users who are in prison or in immigration removal centres.* However, where the Supplier is made aware that a Service User is due to be released from a prison or immigration removal centre, the Supplier should liaise with prison/IRC staff to ensure a smooth transition. This may include carrying out the initial Risk Assessment before the Service User is released and putting a plan in place to manage any safeguarding risks upon release.¹⁷⁸

A research participant therefore described how their organisation had been supporting a potential victim in the community but that had to stop when then they were sent to prison.¹⁷⁹ Furthermore, research participants often considered the existing services within prisons as inadequate to respond to complex needs of modern slavery survivors. One interview participant from a NGO which supports victims of modern slavery noted that:

I have a lot to say about the support system for people in the community. I don’t think that that’s anywhere near adequate. But I will acknowledge that there is a

assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders.

¹⁷⁷ HMPPS Modern Slavery Guidance for prisons in England and Wales, Version 1.4 (n 17) 13, emphasis added. Also, a three-page modern slavery guidance for prisoners produced by HMPPS explains that ‘[d]uring your time in prison, the existing services will provide you with access to support as you need it.’

¹⁷⁸ Home Office, 2020 Modern Slavery Victim Care Contract, 2020MSVCC – Volume 3 – Schedule 2.1 – Service Description V1.2 Clause 6.1.11.

¹⁷⁹ Stakeholder Interview 45 (NGO, England).

support system in place and people do have access to it, but for those in detention and particularly those in prison, from what I have seen, they do not have anywhere near enough access to support as under the modern slavery victim care contract.¹⁸⁰

Research findings therefore suggest that the treatment of potential or confirmed survivors of modern slavery in prisons in England and Wales sometimes differs very little from that of the wider prison population. As one SPOC explained:

[T]hey wouldn't be treated any differently. They would probably get more support from the [Operational Prisoner Offender Manager] when they get due to be released, not so much in the jail itself. They're no different from any other prisoner that we have.¹⁸¹

Therefore, potential victims must wait until they are in the community to access support through the MSVCC. One of the SPOCs described their communication with the Home Office after a prisoner had received a positive RG decision:

I then contacted the decision-maker to say well okay, this support that's potentially there, what does it look like? And I got told there is no support while they're in custody, wait until they're released. Okay, that's a bit odd.¹⁸²

Given that victims in prison are unable to access any support through the MSVCC, their support needs can only be addressed through existing services which are available through the prison 'regime'.¹⁸³ The level of support and assistance which victims will access in prison will be dependent upon the services that each prison can provide through its 'regime' and the general safety and performance of the prison which may vary considerably within the 123 prisons which currently operate in England and Wales.¹⁸⁴ Concerns about the capacity of prisons in England and Wales to respond to the needs of the wider prison population have recently been highlighted by the Assistant General Secretary of the Prisoner Officers Association who described how some prisoners 'are being locked up for 23 hours a day with no education, no association, no work.'¹⁸⁵ A statement by the SPOC interviewed for this study casts doubt about the capacity of prisons to provide the kind of support and assistance required by ECAT:

[W]e literally are delivering a very basic regime where prisoners are getting showers, exercise and going to work if they can (...) there's no other time out of their cell for them, so the interactions with staff and prisoners is very limited, because our regime is so limited.¹⁸⁶

¹⁸⁰ Stakeholder Interview 13 (Solicitor, England).

¹⁸¹ Stakeholder Interview 37 (HMPPS SPOC, England).

¹⁸² Stakeholder Interview 33 (HMPPS SPOC, England).

¹⁸³ The Prison Reform Trust explains that '[t]he regime is the prison routine which determines when you will be unlocked for work, association, meals and access to other services. Regimes are different at different prisons. Information about the regime should be easily available to prisoners and staff,' Prison Reform Trust, 'Regime and Time out of Cell' (June 2022) <<https://prisonreformtrust.org.uk/adviceguide/regime-and-time-out-of-cell/>>.

¹⁸⁴ <https://www.gov.uk/government/organisations/hm-prison-service/about>. It is important to note that not all of these 123 prisons have SPOCs because some are Young Offender Institutes, which are run by the Youth Custody Service, which is not currently covered by the HMPPS Modern Slavery Guidance that established the role of SPOCs. Also, HMP Peterborough has one SPOC even though it is a female and male prison, which is why there are currently 117 SPOCs.

¹⁸⁵ Lizzie Dearden, 'Overcrowding in Prisons Is a "Powder Keg Waiting to Blow"' *The Independent* (19 May 2023) <<https://www.independent.co.uk/news/uk/home-news/prison-overcrowding-figures-disorder-sentences-b2342257.html>>.

¹⁸⁶ Stakeholder Interview 35 (HMPPS SPOC, England).

In Northern Ireland, where no specific guidance on modern slavery in prisons has been developed, a research participant representing NIPS also stated that survivors of modern slavery would not be treated any differently from the general population in the prison. They explained that knowing an individual had been identified as a survivor 'wouldn't change any way the regime that they're in within the prison [...] if a court says [...] they have to go to prison, they're treated the same as every other prisoner.'¹⁸⁷

Recommendation:

HMPPS/NIPS/SPS should ensure consistent practice of providing support to survivors of modern slavery in prisons in line with the established international standards, which require public authorities to take action as soon as there are reasonable grounds to believe that a person is a victim. It is recommended that the UK Government and devolved administrations provide adequate resources to enable them to provide the required level of support.

The HMPPS Modern Slavery Guidance should expressly outline the nature of and way of accessing support within prisons for those who are not part of the formal NRM, either by choice or due to public order disqualification.

b) Providing safe and secure accommodation

Both ECAT and the Modern Slavery Statutory Guidance contain the requirement to provide victims with 'safe and secure accommodation.' For victims of modern slavery who are in the community and do not have a safe place to live, having access to safe and secure accommodation will be the most important form of support they require.

Survivors of modern slavery that were interviewed in this research, as well as those people with knowledge and experience of working with survivors of modern slavery who have been imprisoned, consistently described how the prison environment could replicate the dynamic of modern slavery experiences:

I would say that prison, the experience of being locked up, the experience of being controlled by people absolutely parallels the entrapment that they experienced within their trafficking.¹⁸⁸

[S]urvivors who have experienced abuse and trauma experience a profound loss of their sense of safety and security and a reliably safe environment is a prerequisite for recovery.¹⁸⁹

It is therefore difficult to consider accommodation which can replicate conditions of exploitation as 'appropriate', although there is little that prisons can do to change that situation. The prison environment will therefore likely undermine any positive impacts of support provided in prison to recover from their experiences as victims may continue to be re-traumatised.

Furthermore, ensuring secure accommodation for survivors of modern slavery may prove difficult in an environment where more than 15,000 prisoner-on-prisoner assaults are reported in the 12 months to March 2023 (a rate of 185 assaults per 1,000

¹⁸⁷ Stakeholder Interview 46 (NIPS, Northern Ireland).

¹⁸⁸ Stakeholder Interview 12 (Forensic Psychologist, England).

¹⁸⁹ Stakeholder Interview 25 (Solicitor, England).

prisoners).¹⁹⁰ Fear of violence in prison or being the victim of such violence may cause further trauma and harm to victims of modern slavery. A female survivor of modern slavery described how they were upset by the violence in prison and that while prison staff tried to support her they couldn't provide her with practical assistance:

[S]taff were supportive in a way because I would get very scared of the fights and they would be supportive (...) they knew I went through that. But I don't feel like their support was much, rather just trying to comfort me.¹⁹¹

A further example of the risks facing vulnerable individuals in prison was given by a solicitor interviewed for the research who explained that they had worked with a survivor who was sexually assaulted in prison.¹⁹²

Notably, the HMPPS Modern Slavery Guidance expresses commitment to increasing the safety and security of survivors of modern slavery by considering how and where they are accommodated within the prison estate. However, the needs assessment tool asks that staff consider things which they are unlikely to be able to overcome. For example, it suggests that '[c]areful consideration should be given to whether an individual has been detained in conditions similar to a prison as part of their Modern Slavery experience'. However, if an individual did have such experiences, there is little that staff can do to change that environment, other than releasing them from prison.

Moreover, one of the important aspects of the HMPPS Modern Slavery Guidance concerning accommodation of victims is a requirement to conduct an assessment using the Cell Sharing Risk Assessment (CSRA) with a view to providing a single cell where required. However, this is largely dependent upon a single cell being available at a time when prisons are almost completely full.¹⁹³

The outcome of the CSRA assessment could also be that a victim is moved to a different part of the prison or transferred to a different prison if that would be necessary in cases where a victim of modern slavery is in the same prison as their trafficker(s). If such responses were implemented consistently, they would have a real potential to improve the safety of survivors and address particular concerns highlighted by ATLEU in their judicial review claim against the Ministry of Justice, which resulted in the adoption of the HMPPS guidance. ATLEU explained that survivors they had represented 'were detained in the same prison or cell as the people who may have trafficked them',¹⁹⁴ which creates a clear risk of continuing exploitation within prisons and also often prevents the prison officials from even finding out about this. One support worker interviewed for this research mentioned that:

¹⁹⁰ HMPPS and Ministry of Justice, 'National Statistics, Safety in Custody Statistics, England and Wales: Deaths in Prison Custody to June 2023 Assaults and Self-Harm to March 2023, Published 27 July 2023' (GOV.UK) <<https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-march-2023/safety-in-custody-statistics-england-and-wales-deaths-in-prison-custody-to-june-2023-assaults-and-self-harm-to-march-2023>>.

¹⁹¹ Survivor Interview 02.

¹⁹² Stakeholder Interview 25 (Solicitor, England).

¹⁹³ The prison population in July 2023 for England and Wales was 86,602. This was 99% of the total operational capacity of 87,573, Ministry of Justice, 'Prison Population Figures: 2023' (GOV.UK, July 2023) <<https://www.gov.uk/government/publications/prison-population-figures-2023>>. In conversation with HMPPS leadership it was noted however that 'even though prisons are nearly full to capacity, most prisons are made up of single cells rather than doubles. If an individual is made a high cell share risk than they will be given priority to get a single cell. Usually there are many opportunities to move a low risk CSRA individual into a double cell to accommodate a high-risk individual who needs a single cell. The only time it wouldn't be possible would be if every single cell in the prison was accommodating high risk individuals which would be very unlikely.'

¹⁹⁴ ATLEU, 'New Modern Slavery Guidance for Prison Staff' (ATLEU, 12 July 2022) <<https://atleu.org.uk/cases/2022/7/12/new-modern-slavery-guidance-prison-staff>>.

There's one prison in London where I discovered [while] doing an interview with a young man, who was in for one of the drugs offences, that the perpetrators and everybody who came from his postcode were all put on the same wing, so on the wing with him were his perpetrators. And I immediately flagged that up with the prison service after the interview and in fact he was moved off the wing. But that's another thing, that prisoners are maybe very reluctant to speak to anyone within the prison service because they don't know who's what, they may wonder who is watching what I'm saying, are they thinking I'm being a snitch.¹⁹⁵

Similar concerns were noted in an interview with NIPS staff, who stated that in order to limit the impact of imprisonment on foreign nationals there are efforts to:

Try and place prisoners from the same country together so there was a common language [...] there's a presumption that they would have known each other prior to imprisonment, but it was recognised at that point that there was a [potential] for people who had been trafficked to be placed along with their trafficker, you know if they were arrested in a swoop on some illegal enterprise.¹⁹⁶

Acknowledging these risks, the same NIPS staff highlighted the importance of conducting the CSRA and further explained that:

In the case of any foreign nationals, whether it's intelligence that they have been trafficked, where that occurs, we take steps to ensure that those prisoners are separated from any potential traffickers within the prison system, and they will never come in contact with that person within the prison environment.¹⁹⁷

Despite these challenges, it is suggested that a custodial setting could indeed be a place of refuge for the survivors of modern slavery. Thus, a recent study by Hestia suggests that:

[I]n the absence of safe spaces, and in the face of new unknowns, victims are more likely to return to their exploiters because at least they know what to expect. One senior investigating officer told us that rather than releasing suspected victims of criminal exploitation, it might be safer to place them in immigration detention or in custody.¹⁹⁸

That Senior Police Officer is thus quoted as saying:

It is an ironic form of safeguarding, that we have victims that we take into custody because it gives them a small amount of time in which to think, in which to disclose victim status while they're at a detention centre or prison. Then we can manage them effectively.¹⁹⁹

While the idea of prisons as 'safe houses' for survivors of modern slavery may appear far-fetched, their role in protecting against exploitation and re-victimisation both within and outside prison establishments is critical.

Recommendation:

¹⁹⁵ Stakeholder Interview 18 (NGO, England).

¹⁹⁶ Stakeholder Interview 46 (NIPS, Northern Ireland).

¹⁹⁷ Stakeholder Interview 46 (NIPS, Northern Ireland).

¹⁹⁸ Hestia Life Beyond Crisis, 'Underground Lives: Criminal Exploitation of Adult Victims' (2020) 18.

¹⁹⁹ *ibid.*

Prisons should be alert to the risk of exploitation and further harm within prisons and should ensure that potential and confirmed survivors of modern slavery do not share accommodation with the known or suspected perpetrators of exploitation.

c) Providing mental health support

Research findings pointed to the lack of specialist mental health support for victims of modern slavery in prison. Many survivors of modern slavery have complex mental health needs as a consequence of their experiences.²⁰⁰ One male survivor of modern slavery who was exploited for the purpose of cannabis cultivation confided that he had attempted suicide while in prison after being convicted for the production of cannabis.²⁰¹ Available data reveals that there were approximately 11,224 individuals in prison in England and Wales who self-harmed in the year to March 2023 (138 people per 1,000 prisoners).²⁰² Accordingly, the psychological assistance required for survivors of modern slavery will need to be provided alongside the responsibilities and pressures on prisons to address the mental health of all prisoners. One research participant pointed out to the lack of mental health support for victims of modern slavery who had been in prison: 'from the conversations I've had with clients, they haven't had any specialist counselling or support or [post-traumatic stress disorder] PTSD support or diagnosis on the basis of the NRM.'²⁰³

Furthermore, one SPOC explained that their prison had a good mental health team but there were limited capacities to address more complex needs: '[i]f it's personality disorder or if there [are] traumatic experiences, we don't have that much support (...) there is counselling but I think there is a waiting list.'²⁰⁴

It is therefore evident that even with the best efforts of HMPPS to improve assistance and support to survivors in prison it is extremely challenging for prisons to provide environment conducive of victim's recovery. Despite these limitations, being in the NRM, ensuring people in prison are aware of support and assistance which they can access upon release, and the prison being aware that a prisoner is a potential victim will be important for ensuring that specialist support can be quickly accessed once they have been released into the community.

Recommendations:

It is recommended that the UK Government and devolved administrations ensure that funding and resource allocation is sufficient to enable HMPPS/NIPS/SPS to identify and support survivors of modern slavery in prisons in line with the established international standards.

Prisons should provide mental health support tailored to the specific needs of modern slavery survivors through adequate training and should be allocated appropriate resources to provide such support.

It is recommended that the UK Government and devolved administrations ensure that commissioned services in the new Modern Slavery Victim Care Contract (and

²⁰⁰ Nicola Wright, Melanie Jordan and Runa Lazzarino, 'Interventions to Support the Mental Health of Survivors of Modern Slavery and Human Trafficking: A Systematic Review' (2021) 67 *International Journal of Social Psychiatry* 1026. See also Minh Dang et al., 'Placing survivor wellbeing on the policy and evidence map' (Modern Slavery and Human Rights Policy and Evidence Centre, July 2023).

²⁰¹ Survivor Interview 05.

²⁰² HMPPS and Ministry of Justice (n 190).

²⁰³ Stakeholder Interview 06 (NGO, England).

²⁰⁴ Stakeholder Interview 26 (HMPPS SPOC, England).

equivalent specialist services in Scotland and Northern Ireland) are properly resourced to provide support to potential and confirmed victims in prisons.

4. Responsibilities of Prisons with Regards to Bail and Release from Prison

Victims of modern slavery will be released from prison either when they have been bailed, have completed their prison sentence, or where a decision to prosecute them has been withdrawn. In case of foreign nationals, this includes in addition situations when they are deported, transferred to a prison in a country of their origin, removed early (under the early release scheme), or released via facilitated removal. Ensuring safe release from prison is critical for survivors of modern slavery accessing specialist support within the community and prevention of re-trafficked upon their release.

The risk of re-trafficking post release has been pointed out by many experts interviewed for this research.²⁰⁵ One research participant who was a former member of prison staff acknowledged the risks that people experience immediately when they are released noting that:

[S]o the gates open, they walk out, it's known that exploiters would meet them at gates, and that's just exploiters in general, not necessarily even within the field of trafficking (...) the girls' pimps and exploiters will always meet them at the gate.²⁰⁶

Some research participants who were interviewed before the introduction of the HMPPS Modern Slavery Guidance and participants who discussed experiences in other jurisdictions, or experiences that pre-dated the Guidance, described cases of concerning situations where individuals had been released or bailed in ways which had left them and others in vulnerable situations.²⁰⁷ The following statement from a police officer in England describing a release of a Vietnamese man who has been bailed illustrates these concerns:

I got a phone call on the train coming home from work to say they're releasing him in like half an hour. And the prison has this kind of duty, I understand, that once somebody is no longer allowed to be in custody, they literally have a sort of timeframe of getting them out the door. So I fortunately had a couple of staff who were still in the office, so rang them and said you need to get to [name of prison] and pick this chap up, because he's in the NRM, Salvation Army are set (...) we knew at some point he was going to be released, we just had no date or time or anything for it (...) we'd sort of set all the other support up ready for when he was released but we just needed to get hold of him. They'd never met him (...) So they turned up, he was released out the prison door just as they sort of arrived, with a five pound note and an address written on a piece of paper, because obviously he spoke no English, the address was the address of the cannabis grove that he'd been arrested from, which obviously wasn't his address, and they obviously, you know, got hold of him, and just plain clothes, you know, we worked in jeans and t-shirt plain clothes type and just said are you [name of person] he said yes, and he got in the car with them [the police officer] who picked him up said you could see why this guy was vulnerable because he didn't ask who we were.²⁰⁸

²⁰⁵ 'I think victims of modern slavery in the prison system are more likely to be at risk of both re-trafficking but then also other forms of exploitative behaviour,' Stakeholder Interview 44 (Government Civil Servant, Wales).

²⁰⁶ Stakeholder Interview 16 (NGO, England).

²⁰⁷ Stakeholder Interviews 20 (NGO, Scotland) and 22 (Police, England).

²⁰⁸ Stakeholder Interview 22 (Police, England).

Another research participant described a case where a potential trafficker was nearly bailed to a safe house for victims of trafficking which housed one person who they had been accused of trafficking:

[T]hank goodness we caught it before it happened, but I remember one bail release that they wanted to do to us which was bailing the trafficker, or the person who was accused of the trafficking let's say, into our same safe house with people that this person was accused of trafficking.²⁰⁹

The HMPPS Modern Slavery Guidance outlines actions that should be taken in respect of immigration and remand bail and the release of potential and confirmed victims from prison. It emphasizes the necessary communications and coordination between HMPPS and the statutory or non-statutory organisations which will be supporting the individual upon release. This includes communications necessary to 'organise the prisoner's collection on the day of release as he/she should be picked up from the prison.' The HMPPS Modern Slavery Guidance thus requires that prison staff 'communicate with the Salvation Army, local authority, or other provider, and the prison reception to organise the prisoner's collection on the day of release as he/she should be picked up from the prison.' The Guidance nonetheless cannot guarantee an organisation required to collect the individual on release can practically do so.

The HMPPS Modern Slavery Guidance also notes that prison staff should 'inform the legal representative to submit a bail application pending confirmation of the safehouse or other safe, secure, and appropriate location.' It is important that there is communication and coordination with whichever organisation might be seen as having suitable accommodation for a person to be bailed.

It remains to be seen to what extent the HMPPS Guidance will improve future practice on safe release of survivors of modern slavery. However, it must be noted that positive developments introduced by the HMPPS Modern Slavery Guidance do not extend to the prison services of Northern Ireland and Scotland, where similar practices may continue unabated in the absence of clear and specific guidance for prison staff. A member of staff at an organisation in Scotland interviewed for the research described how they were not always contacted about being used as a bail address:

[I]t happens sometimes that we haven't actually agreed to be a bail address, if that makes sense, but then the courts just kind of put that through without actually checking with us that we can be a bail address, we may not have accommodation spaces where they're putting the bail address.²¹⁰

Recommendations:

Prisons should be alert to the risk of exploitation of the survivors of modern slavery upon release and, with the consent of survivors, should liaise with the organisations delivering government funded specialist support for people referred to the NRM to enable persons leaving prison to access this support and reduce the risks of re-trafficking.

The HMPPS Modern Slavery Guidance for prisons contains a clear and detailed instruction to the competent designated member of staff to liaise with the relevant agencies dealing with the modern slavery case. This instruction should be followed in all cases. Moreover, prisons in Scotland and Northern Ireland should include similar requirements in any guidance developed in the future.

²⁰⁹ Stakeholder Interview 20 (NGO, Scotland).

²¹⁰ Stakeholder Interviews 19 and 20 (NGOs, Scotland).

Prisons in all devolved jurisdictions should strive to improve contact with support organisations to better understand their work. This may include opportunities for SPOCs to visit safe houses as well as visits to prisons by safe house staff. Prison services and the government funded providers of support could consider developing Memoranda of Understanding about how releases should be managed.

VI. Examples of Good Practice in Identifying and Supporting Survivors of Modern Slavery in UK Prisons

Despite numerous challenges to the identification and support of survivors of modern slavery in UK prisons, discussed in the previous section, this section considers practices identified through this research which may be viewed as ‘good practice’. A key observation among study participants is that there seems to be a lack of *institutionalised* good practice, with examples of good practice often being *ad hoc* and dependent on individual commitment and effort.²¹¹ Before proceeding to discuss such examples of good practice, it is important to reflect on the meaning of the term ‘good practice’.

The literature on modern slavery often uses the term ‘good practice’, but the concept is not clearly defined and there is a lack of critical examination about how to identify and measure interventions that could be regarded as good practice.²¹² Given the absence of literature on the experiences of survivors of modern slavery in prison, and that international instruments and relevant bodies do not offer specific guidance on how prisons should discharge their obligations to survivors, there have not been any efforts to define good practice in this context or to document any examples of good practice. As a result, it is difficult to establish universal benchmarks of what counts as good practice in this domain.

The report therefore considers as good practice any action or measure identified through this research that is capable of overcoming the challenges with discharging positive obligations to identify and support every victim of modern slavery discussed in the previous section. In addition, participants in this research were asked to provide their views on what could be considered good practice with regards to the identification and support of modern slavery survivors in prisons. While the common response was that any *existing* examples of good practice were usually a result of individual efforts and interest in the issue rather than institutional and structural,²¹³ they have identified actions which, if implemented in a systematic way, could lead to improved institutionalised responses.

It is important to acknowledge that much of the data collection for this research study pre-dates the HMPPS Modern Slavery Guidance and the establishment of the modern slavery SPOCs in prisons in England and Wales, which may be a catalyst for significant and widespread good practice. Some research participants from NGOs as well as SPOCs interviewed for this study described recent developments as a starting point for more awareness raising and other measures to support victims and survivors of modern slavery in prisons, with the SPOCs currently taking on their tasks and gaining more

²¹¹ Stakeholder Interviews 03 (NGO, England), 05 (NGO, Northern Ireland), 22 (Police, England), and 26 (HMPPS SPOC, England).

²¹² For example, the following report is focused on good practice but it does not critically explore the meaning of ‘good practice’ and how such good practice can be identified and distinguished from less good practice, Ailish Saker, ‘Practitioner Responses to Child Trafficking: Emerging Good Practice’ (Independent Anti-Slavery Commissioner; Cumberland Lodge 2022)

<https://www.cumberlandlodge.ac.uk/sites/default/files/practitioner_responses_to_child_trafficking_-_emerging_good_practice_screen.pdf>. An exception is an article from Surtees and Gallagher which provides a useful critical discussion on the lack of work to identify and measure success in anti-trafficking interventions, Anne T Gallagher and Rebecca Surtees, ‘Measuring the Success of Counter-Trafficking Interventions in the Criminal Justice Sector: Who Decides—and How?’ [2012] Anti-Trafficking Review 10.

²¹³ ‘I mean there are some promising things. It’s a shame that’s its mostly on an individual basis to be honest,’ Stakeholder Interview 03 (NGO, England). Similar aspects were raised in Stakeholder Interviews 05 (NGO, Northern Ireland), 22 (Police, England), and 26 (HMPPS SPOC, England).

knowledge.²¹⁴ Some SPOCs therefore reported that they were only starting with awareness raising and have not conducted training yet²¹⁵ while one also noted that 'there is no good practice because we're in such a basic stage of implementation.'²¹⁶

Future research on this topic may therefore potentially capture markedly different learning about new and developing good practice.

1. The HMPPS Modern Slavery Guidance and the Establishment of Modern Slavery Single Points of Contact (SPOCs) in Each Prison in England and Wales as Good Practice

Despite challenges in the UK's response to survivors of modern slavery in prisons, the development of HMPPS Modern Slavery Guidance for prison staff in England and Wales and continuing efforts to develop an overarching policy for prison, probation, and youth custody service are commendable and unique internationally and may itself be considered good practice towards meeting the obligations of these public authorities to identify and protect victims of modern slavery.

Moreover, even though the initiative to develop the HMPPS Modern Slavery Guidance for prisons in England and Wales came from the civil sector, through a judicial review claim against the Ministry of Justice, the way the authorities have approached the work to develop the Guidance could be seen as good practice. The Ministry of Justice and HMPPS have regularly consulted with civil society and individuals who are working with survivors of modern slavery, as well as prisoners and survivors of modern slavery. This collaboration has helped to identify the key issues that should be addressed in the Guidance and how to communicate and explain the issue of modern slavery to staff and prisoners. Such an approach could be seen as an example of partnership in line with the universally endorsed '4P's' approach to addressing human trafficking (Prevention, Protection, Prosecution, Partnership). A NGO worker from England described the work with HMPPS as 'fantastic' because they thought that HMPPS was taking seriously their recommendations about the need for 'in-depth training of their prison officers' and that this topic and survivors deserve urgency seriously.²¹⁷

Furthermore, the establishment of modern slavery SPOCs in prisons in England and Wales could be considered as good practice as an attempt to ensure that a focal point in each prison is able to coordinate efforts to identify and support survivors of modern slavery. This recent establishment of modern slavery SPOCs in prisons is consistent with the approach taken by police forces and local authorities which have used a modern slavery SPOC model for many years.²¹⁸ NGOs, SPOCs, and police described how they felt awareness and knowledge has increased as a result of the establishment of the HMPPS guidance and modern slavery SPOCs.²¹⁹ Accordingly, taking a systematic,

²¹⁴ Stakeholder Interviews 04, 18 (NGOs, England) and 27, 31, 32, 34 (HMPPS SPOCs, England).

²¹⁵ Stakeholder Interviews 27, 31, 32, 34 (HMPPS SPOCs, England).

²¹⁶ Stakeholder Interview 27 (HMPPS SPOC, England).

²¹⁷ Stakeholder Interview 18 (NGO, England): 'the work we're doing with the prison service is fantastic, we spent time, they've come to visit us here, I've been in roundtables where we've talked all about what we feel is the issues, and the work that's going on is phenomenal.'

²¹⁸ UK HM Government, 'Modern Slavery Strategy' (2014) 32 and 34
<https://www.antislaverycommissioner.co.uk/media/1079/modern_slavery_strategy_final_dec2015.pdf>.

²¹⁹ Different research participants reported that the awareness about modern slavery in the prison system and among prison staff has severely increased lately, especially through the appointment of SPOCs, and that processes to raise awareness and knowledge have been initiated, information shared, and the contact to NGOs and others working on this issue fostered, Stakeholder Interviews 04, 18 (NGOs, England) and 27, 31, 32 (HMPPS SPOCs, England). A research participant from the police mentioned in particular the role and

comprehensive, and multi-agency approach to the treatment of modern slavery survivors in prisons through the adoption of HMPPS Modern Slavery Guidance and ongoing efforts to develop an overarching policy for Prison, Probation, and Youth Custody service is commendable. However, it must be noted that similar guidance has not been developed for Scotland and Northern Ireland leaving a gap in the UK's overall approach to this issue.

2. The Need for *Systematic* Good Practice in Identifying and Supporting Survivors of Modern Slavery in UK Prisons

Overall, research participants reported a dearth of examples of good practice that could be used to improve the identification and support of survivors of modern slavery in UK prisons.²²⁰ In particular, survivors interviewed for this study could not provide any example that they considered to represent good practice, although it must be noted that survivor's involvement in the study has not been extensive.

In the SPOCs survey, 20 out of the 50 participating SPOCs (40%) felt that they had no successes or achievements to report so far. Other research participants mentioned that it was too early for them to comment on examples of good practice. As the new HMPPS Modern Slavery Guidance has only recently been published, work which may emerge as good practice was currently still being developed.²²¹ Accordingly, a member of staff at HMPPS noted that:

I guess my role at the moment is, if I'm being honest, really understanding what our role is, what our strategic objectives are in terms of modern slavery, and then how we kind of operationalise that to make sure that we're identifying the right people that are known to HMPPS, either in prison or on community supervision with us, and that we are then putting the appropriate safeguarding measures in place. So, it's really early doors, if I'm honest, in HMPPS, I think there's probably some pockets of good work, but we've got a lot of work to do.²²²

One SPOC similarly acknowledged that 'there is no good practice because we're in such a basic stage of implementation.'²²³ Many seem to view the current situation as a starting point for other measures taken by prisons, with the SPOCs currently taking on their tasks and gaining more knowledge.²²⁴ This represents an improvement towards complying with existing obligations under domestic, regional, and international law. Research participants, however, did not express awareness of such obligations or an understanding that actions taken to improve the treatment of the survivors of modern slavery in prisons directly stem from these sources. Future and follow-up research on this topic may therefore capture markedly different learning about new and developing good practice.

Notably, perceptions about the lack of good practice contradict with statements made by one SPOC who noted that:

importance of the Modern Slavery Act to kick-start these processes and awareness in general and beyond prisons, Stakeholder Interview 21 (Police, England).

²²⁰ Stakeholder Interviews 03 (NGO, England), 05 (NGO, Northern Ireland), 31, 32 (HMPPS SPOCs, England), and 24 (Expert Witness, England).

²²¹ Stakeholder Interviews 03, 15 (NGOs, England) and 27, 34 (HMPPS SPOCs, England).

²²² Interview with HMPPS (KI-43).

²²³ Stakeholder Interview 27 (HMPPS SPOC).

²²⁴ Stakeholder Interviews 04, 18 (NGOs, England), and 27, 31, 32, 34 (HMPPS SPOCs, England).

I think overall our prison is very good at identifying prisoners that are likely survivors of modern slavery, either through chaplaincy or through prison offender management (...) and also we're very quick at referring them.²²⁵

While it may be that *this* particular prison has been agile in discharging its responsibilities towards survivors of modern slavery, there is little doubt that such examples are still not found across the prison service.²²⁶ Accordingly, when good practice was mentioned by research participants, specific measures or actions referred to were often rather *ad hoc* and/or their success largely depended on the high commitment and effort of individuals – be it SPOCs, NGO staff, solicitors or the police.²²⁷ One research participant from HMPPS explained how 'it's just really inconsistent, there's probably really good pockets of work.'²²⁸ They further illustrated the lack of consistent and systematic responses across UK prisons:

[W]e've got an MDS SPOC at the moment who's all over it, really on the ball, looking out for any signs of it, checking offences when people come in, like cannabis farmers, cultivating offences, that sort of stuff, she goes to see them, has a conversation with them. So, there's some really good work there and she's built links locally with support services and she's able to get them to come in, but it's not consistent, it's not laid out in policy as such, so there's no expectation on it, it's just that we're really lucky we've got somebody who has a personal interest and passion for developing that area of our work. If that prisoner moves to a different prison, they won't get the same level of service.

She's not waiting for somebody to tell her this person has had an NRM or whatever. She is going in and looking at individuals as they come into the prison estate and looking for red flags if you like, what is the nature of their offence, what is their age, what is their nationality, having a quick look at the CPS documents and what she's done is developed a really strong network of local agencies that she knows, she can tap into to come in and support those individuals. So, I think that is a really good example of what can be done if you've got the right people at the table.²²⁹

Examples of such individual commitment in the absence of institutionalised good practice was emphasised by other research participants.²³⁰ One such example concerns training for prison staff provided by an NGO, which occurred due to a personal connection between the modern slavery SPOC and a staff member at the NGO:

²²⁵ Stakeholder Interview 26 (HMPPS SPOC, England).

²²⁶ Stakeholder Interviews 03 (NGO, England), 05 (NGO, Northern Ireland), 22 (Police, England), and 26, 31, 32 (HMPPS SPOCs, England).

²²⁷ Stakeholder Interviews 03 (NGO, England), 05 (NGO, Northern Ireland), 22 (Police, England), and 26, 31, 32 (HMPPS SPOCs, England). For example, one SPOC mentioned the importance of having connections: 'I actually know somebody who works for the NGO... for the first responders, and when I took over as SPOC I was like actually it would be really good for your organisation to come in, erm, so it was through them that I got the contact details for, erm, I think the deputy, erm, to arrange that training, so since then, erm, we've kind of been in contact, and they were more than happy. I kind of proposed the idea and said, you know, this is a... I think we'd find this useful with your experience, and the fact that you have this contact with them in the community, erm, would you be happy to come in? Erm, and they said yes, so it just kind of went from there,' Stakeholder Interview 31, 32 (HMPPS SPOCs, England). Another research participant referred to 'some good lawyers in the sector,' Stakeholder Interview 23 (Solicitor, England). A research participant from HMPPS Wales also mentioned one colleague being particularly helpful, 'she's really on it, she's created sort of forms, erm, sort of processes, things like that, she's really good, so that we're more aware of what we need to do, how we need to recognise them, referrals that need to be made,' Stakeholder Interview 28 (HMPPS SPOC, Wales).

²²⁸ Stakeholder Interview 43 (HMPPS, England).

²²⁹ Stakeholder Interview 43 (HMPPS, England).

²³⁰ Stakeholder Interviews 03 (NGO, England), 05 (NGO, Northern Ireland), 22 (Police, England), and 26, 31, 32 (HMPPS SPOCs, England)

I actually know somebody who works for the NGO, for the first responders, and when I took over as SPOC I was like actually it would be really good for your organisation to come in, so it was through them that I got the contact details to arrange that training, so since then we've kind of been in contact, and they were more than happy. I kind of proposed the idea and said I think we'd find this useful with your experience, and the fact that you have this contact with them in the community, would you be happy to come in? And they said yes, so it just went from there.²³¹

Providing training with local partners is in line with the HMPPS Modern Slavery Guidance, which stipulates that '[a]wareness and training sessions should be explored with local and national charities'.²³² Despite this, one SPOC involved in delivering training noted that the set-up of their training was operationally difficult, not coordinated with other SPOCs, and 'it's more my own initiative'.²³³

The following discussion contains examples of good practice identified through this research, which could be used to develop a more systematic practice across prison services in the UK. The majority of such examples are relevant for all three areas of practice where challenges have been identified (identification, support, and release of prisoners). Accordingly, efficient communication and information sharing as well as training and awareness raising are vital for identifying and providing support to survivors. They are also a precondition for survivors' continued access to support upon release and thus prevention of re-trafficking. Examples of such cross-cutting issues will be elaborated in the next two sub-sections followed by more specific examples of good practice in relation to the identification of survivors, provision of adequate support, and the release and prevention of re-trafficking.

3. Good Practice on Information Sharing And Cooperation Between Different Actors

As pointed out in section V, the lack of information sharing, communication, and cooperation between different actors is a key challenge to identifying and supporting survivors of modern slavery in prisons. However, some research participants reported good practice in this regard. This applies to both information exchange *among/within* government institutions (multi-agency approach)²³⁴ as well as *between* public authorities and NGOs.²³⁵

Several study participants from the NGO sector highlighted partnership and information exchange and communication with SPOCs, and the prison service in general, as notable

²³¹ Stakeholder Interview 31, 32 (HMPPS SPOCs, England).

²³² HMPPS Modern Slavery Guidance for prisons in England and Wales, Version 1.4 (n 17) 19.

²³³ Stakeholder Interview 26 (HMPPS SPOC, England).

²³⁴ A SPOC reported that 'Having Home Office in-house is very positive because we don't then have to wait for a caseworker somewhere in Croydon to respond to us,' Interview with a SPOC (KI-26). They furthermore mentioned that having support from partnership agencies and governors and good working relationship within the prisons helps to 'undertake timely referrals,' Stakeholder Interview 26 (HMPPS SPOC, England).

²³⁵ Stakeholder Interviews 01, 14, 18 (NGOs, England), 07, 11 (NGOs, Scotland), and 22 (Police, England). For example, an NGO worker from England reported that 'the professionals who work in prison have the conversation with these victim [...] and they spot the signs and it's like they send me an email that says, "This person, you know, we spotted that and that sign would do, we think she could be a potential victim of human trafficking, of modern slavery. Would you mind having a chat with her?";' Stakeholder Interview 01 (NGO, England). An NGO from Scotland reported that such exchanges between government institutions and NGOs are sometimes initiated by the government and sometimes by the NGOs and that these exchanges are also used to discuss issues such as an upcoming release of a prisoner, Stakeholder Interview 11 (NGO, Scotland).

examples of good practice.²³⁶ For example, an NGO worker from Wales seconded to the police reported that they regularly send a list with the names of survivors who are in the NRM to the SPOC to facilitate access to support in prisons:

So basically, when an NRM is completed in South Wales, or if a crime has been committed in South Wales, our force intelligence unit received an NRM, so my role sits under the regional organised crime unit, (...) as part of [that], I get access to all the NRMs that are submitted on a weekly basis. So, one of the administrative workers puts together a spreadsheet, highlighting the crime, details of the person, the crime reference number, what the status of the NRM is, and we get that list on a weekly basis. So, what I'm able to do is just go through each of the cases to see who is in HMP and if they're in HMP then I'll draw out that list together, and then I'll send that to [x] to say these are the people we've got in HMP, and this is the NRM status.²³⁷

Similarly, a SPOC would contact that NGO worker seconded to the police when they think someone in prison could be a survivor, but are unaware of their NRM status. This would trigger the process where someone from their organisation would visit the potential survivor in prison 'and go through the whole NRM process'.²³⁸

In addition to NGO staff being seconded to the police, an NGO staff member from Northern Ireland reported that one prison officer had joined them for six months to improve their understanding about modern slavery and processes related to identification and support.²³⁹ While such collaboration may increase the understanding of individual prison officers, this knowledge would need to be systematically acquired to improve identification and responses across the UK.

Another research participant from a NGO in England expressed belief that problems caused by poor communication were currently being 'ironed out', noting that they had been building a 'great partnership' with the prison service and that the work with HMPPS was positive.²⁴⁰

In addition to collaboration with NGOs, several SPOCs pointed to the valuable support they received from HMPPS so far. SPOCs felt that the support and guidance they receive from HMPPS headquarters was helpful, easy to access, and that relevant HMPPS personnel was very approachable.²⁴¹ This support includes awareness raising, the provision of information and clear guidance, a Teams channel for sharing the experiences and knowledge, and a quarterly newsletter.²⁴² These can be considered good practice as the newsletter updates all SPOCs of recent developments and is an opportunity to raise awareness for certain issues. The Teams Channel provides an opportunity for SPOCs to engage with each other and share good practices but also to discuss challenges. However, some SPOCs mentioned that these resources have been rarely used:

I have seen nothing put on there, or very, very limited, all very establishment-specific, so maybe not quite relevant to us. I think the sharing between establishments is really, really poor.²⁴³

²³⁶ Stakeholder Interviews 01, 18 (NGOs, England), 07, 11 (NGOs, Scotland), 41 (NGO staff currently seconded to a police force, Wales).

²³⁷ Stakeholder Interview 41 (NGO staff currently seconded to a police force, Wales).

²³⁸ Stakeholder Interview 41 (NGO staff currently seconded to a police force, Wales).

²³⁹ Stakeholder Interview 05 (NGO, Northern Ireland).

²⁴⁰ Stakeholder Interview 18 (NGO, England).

²⁴¹ Stakeholder Interviews 27, 34, 35 (HMPPS SPOCs, England) and 28 (HMPPS SPOC, Wales)

²⁴² Stakeholder Interview 35 (HMPPS SPOC, England).

²⁴³ Stakeholder Interview 27 (HMPPS SPOC, England).

This is understandable given many other commitments SPOCs may have as part of their role. Therefore, a SPOC said that they did not look at the Teams Channel and the newsletter because 'it was sent by email and I was like "ah more work". There are contacts there, so if I needed it, I could send a global email out to all the SPOCs, and ask a question and then I'd probably get different feedback'²⁴⁴ It is therefore important that the available sources have been utilised to foster information and knowledge exchange and it is vital that SPOCs have time to engage in these activities.

Besides the communication and collaboration with government agencies, cooperation between NGOs was reported to be crucial. Different NGOs pointed out the importance of joining forces and collaborating with each other, including through information, knowledge, and skill sharing and creating partnerships.²⁴⁵

An important aspect related to good communication and information sharing emphasised by study participants is the need to react swiftly when a case of modern slavery is encountered.²⁴⁶ A SPOC emphasised that having support from 'partnership agencies' and governors, good working relationships within the prisons and good relationship and collaboration with the Home Office helps to 'undertake timely referrals':²⁴⁷

I feel like time is of the essence in these cases and I feel like trying to make the referrals quick as possible, alerting probation, keeping anybody else who's involved, any other support workers involved in their life, any other organisations involved, all of us staying in it together, like working together, collaborating, because I feel like sharing information really does help. We're in the best position to help and collaborate and work together in order to best support our client.²⁴⁸

4. Good Practice on Training and Awareness Raising

There is a consensus among research participants that individual staff can make a difference when they receive appropriate training and are committed and interested in survivors' wellbeing.²⁴⁹ The adoption of the HMPPS Guidance and the appointment of SPOCs has been seen as a starting point with many research participants reporting that the awareness about modern slavery among prison staff has significantly increased.²⁵⁰

Both SPOCs and members of the NGOs interviewed for this research discussed ongoing and future training for prison staff on their role in safeguarding rights of survivors of

²⁴⁴ Stakeholder Interview 34 (HMPPS SPOC, England).

²⁴⁵ Stakeholder Interviews 06 (NGO, England) and 11 (NGO, Scotland).

²⁴⁶ Stakeholder Interviews 05 (NGO, Northern Ireland), 14 (NGO, England), and 22 (Police, England).

²⁴⁷ Stakeholder Interview 26 (HMPPS SPOC, England). The SPOC further mentioned with 'having the Home Office in-house, despite the fact they're not caseworkers, they've got access to Home Office systems'.

²⁴⁸ Stakeholder Interview 14 (NGO, England).

²⁴⁹ Stakeholder Interviews 03, 06 (NGOs, England), 05 (NGO, Northern Ireland), 07 (NGO, Scotland), and 22 (Police, England).

²⁵⁰ Stakeholder Interviews 04, 18 (NGOs, England) and 27, 31, 32, 34 (HMPPS SPOCs, England). This was also reflected in the SPOCs survey: The most frequently cited achievement mentioned by 6 (out of 50) SPOCs was the ability to raise awareness among prison staff regarding modern slavery as a concern within the prison. A research participant from the police mentioned in particular the role and importance of the Modern Slavery Act to kick-start these processes and awareness in general and beyond prisons, Stakeholder Interview 21 (Police, England).

modern slavery.²⁵¹ One SPOC described providing hybrid e-learning and in-person training which would be delivered in four sessions throughout the year,²⁵² while another mentioned that 'speed training, trying to upskill staff as quick as possible, just on the basics' was crucial.²⁵³ One SPOC provided an example of a briefing about modern slavery in a team meeting and plans to publish an article about it in the prison bulletin.²⁵⁴

SPOCs also mentioned plans to conduct training, including on 'what to look out for' with as many prison staff as possible, with an initial focus on the reception staff, first night centre staff, and offender management staff, in other words, those who are in contact with prisoners who newly arrive.²⁵⁵ Others also pointed out the importance of raising awareness among a range of prison staff members in prisons, including the governors, chaplaincy, foreign national coordinators, the medical staff, and staff who are booking visits.²⁵⁶ Being aware of the indicators of modern slavery is the vital first step to their identification. As one participant aptly noted, 'what the mind doesn't know, the eye can't see' suggesting that victims would not be identified if staff are not aware of the issue and how to spot signs.²⁵⁷

A research participant working with NIPS also reiterated the importance of involving those who may come in contact with prisoners at different stages in the identification process. They mentioned chaplains and other religious representatives, people from the independent monitoring board who visit the prison, and medical staff (including doctors, dentists, and nurses) who had been 'given training on the referral mechanism'.²⁵⁸ When asked about awareness and training for staff, the NIPS research participant explained that 'all of our new recruits have been through [training] and have seen the signs to look out for' and provided examples of informational posters placed strategically throughout the prison, particularly in areas where all staff pass through.²⁵⁹

Several research participants pointed out as an example of good practice collaboration with NGOs in delivering training for prison staff on the indicators of modern slavery in collaboration with NGOs.²⁶⁰ One participant from a NGO reported to have provided information to the newly appointed SPOC to better understand the NRM and how prisons should respond to potential victims.²⁶¹ Another NGO worker reported that their organisation had provided information material, including in Vietnamese, and developed a memorandum of understanding with one prison to facilitate identification and 'referral to guardianship', especially in the context of children.²⁶²

Despite such notable efforts of individual staff members, it has been observed that 'there's a very, very high percentage have no understanding [of modern slavery]. I still think there needs to be an awful lot of training done around it.'²⁶³ Furthermore, a SPOC pointed out the need to scale up training currently delivered on the initiative of SPOCs:

Operationally it's quite complex, and this is why I think my colleagues are not really doing it. And it's more my own initiative but I think it's part of my role as SPOC for

²⁵¹ Stakeholder Interviews 01, 06, 14, 16, 18 (NGOs, England), 07 (NGO, Scotland), and 26, 27, 29, 31, 32 (HMPPS SPOCs, England).

²⁵² Stakeholder Interview 26 (HMPPS SPOC, England).

²⁵³ Stakeholder Interview 27 (HMPPS SPOC, England).

²⁵⁴ Stakeholder Interview 29 (HMPPS SPOC, England).

²⁵⁵ Stakeholder Interview 31, 32 (HMPPS SPOCs, England).

²⁵⁶ Stakeholder Interview 18 (NGO, England).

²⁵⁷ Stakeholder Interview 21 (Police, England).

²⁵⁸ Stakeholder Interview 46 (NIPS, Northern Ireland).

²⁵⁹ Stakeholder Interview 46 (NIPS, Northern Ireland).

²⁶⁰ Stakeholder Interviews 01, 06, 14, 18 (NGOs, England), 07 (NGO, Scotland), and 31, 32 (HMPPS SPOCs, England).

²⁶¹ Stakeholder Interview 18 (NGO, England).

²⁶² Stakeholder Interview 07 (NGO, Scotland).

²⁶³ Stakeholder Interview 05 (NGO, Northern Ireland).

modern slavery, so I'm not sure what other colleagues are doing in other prisons, I haven't discussed with them. So, I'm not sure what they're doing in their prisons, but it doesn't come from the centre, this is in-house only.²⁶⁴

Awareness about modern slavery and available support is not only important for prison staff but it is also crucial to provide information to potential survivors. Of particular significance is providing information in different languages. For instance, some prisons provide multilingual information documents developed by HMPPS at reception.²⁶⁵ HMPPS has pointed out that staff and prisoners have access to a three-page Modern Slavery Guidance for Prisoners, which is currently available in nine languages, as well as a Modern Slavery leaflet available in 11 languages. Staff are encouraged by HMPPS to print these documents and to place them in key areas such as reception, keyworker rooms, or First Night Centres. One participant from the NGO sector also referred to the importance of leaflets in different languages and suggested that the provision of information in prisons can have effect noting that 'I actually had a person who came out of prison and said "I saw your number inside the prison".'²⁶⁶

5. Good Practice on Identifying and Supporting Survivors of Modern Slavery in Prison and in Relation to Release and Prevention of Re-trafficking

When it comes to identifying and supporting survivors of modern slavery in prisons, previous sections explained the vital importance of information sharing, collaboration, and training of prison staff. Availability of information documents in different languages, an updated induction booklet, or questionnaires completed by reception staff and then shared with SPOCs are believed to lead to improved identification rates, and by extension access to support already available in prisons (i.e. for vulnerable prisoners).²⁶⁷

In addition to disseminating information, efforts have been made to collect information from prisoners with a view to identifying them upon arrival in prison. SPOCs reported adding two questions to the induction booklet that is used to interview new prisoners who arrive at reception ('do you believe you're a victim of modern slavery, have you got an NRM currently going through?').²⁶⁸ However, as discussed in Section V of this report, it is questionable whether such a direct question is helpful or might even retraumatise survivors. If the reception staff identifies a potential survivor or a person discloses to be a survivor of modern slavery, the reception staff then fills out a questionnaire which is sent to the SPOC.²⁶⁹ They have designated staff members ('the reception [Custodial Manager], the first night [Custodial Manager], and the young adults [Custodial Manager]'²⁷⁰) to fill out this questionnaire to ensure to have specific people assigned to this task so it 'doesn't get missed'.²⁷¹

In addition, they produced posters placed at the induction unit to provide more information for potential survivors 'so once they can see the posters, the information, the guidance that's up in regards to us being able to help and support them, they might be a little bit more forthcoming'.²⁷² One SPOC also mentioned creating and distributing a

²⁶⁴ Stakeholder Interview 26 (HMPPS SPOC, England).

²⁶⁵ Stakeholder Interviews 27, 31, 32 (HMPPS SPOCs, England).

²⁶⁶ Stakeholder Interview 01 (NGO, England).

²⁶⁷ Stakeholder Interviews 27, 31, 32 (HMPPS SPOCs, England).

²⁶⁸ Stakeholder Interview 31, 32 (HMPPS SPOCs, England).

²⁶⁹ Stakeholder Interview 31, 32 (HMPPS SPOCs, England).

²⁷⁰ Stakeholder Interview 31, 32 (HMPPS SPOCs, England).

²⁷¹ Stakeholder Interview 31, 32 (HMPPS SPOCs, England).

²⁷² Stakeholder Interview 31, 32 (HMPPS SPOCs, England).

cohort keyworker booklet as a means of informing staff about support mechanisms for victims of modern slavery in prison.²⁷³

Good practice in efforts to identify survivors of modern slavery were also referenced by the research participant from NIPS, who explained their process as ‘when prisoners arrive [...] we try to identify any links ourselves, [...] simply through the interviews we conduct around the knowledge of other prisoners who are already in the prison, or any co-accused who arrived with them’.²⁷⁴

When it comes to providing support to identified and suspected survivors of modern slavery, a modern slavery prisoner needs assessment developed by HMPPS is an example good practice in attempting to identify specific support needs of survivors of modern slavery. Moreover, two SPOCs explained how they try to provide support through a service established for those who are considered to pose a raised risk of harming others through their behaviour in custody. (‘Challenge, Support and Intervention Plan (CSIP)’)²⁷⁵:

So, one of the ways that a prisoner who’s a victim of modern slavery and needs that extra bit of support, we could always put them on a CSIP plan and issues can be put on there, so staff can be looking at those, and those that are on CSIPs get monitored every day, and an entry gets put onto their NOMIS. So, staff would know what they’re looking for, they would know how to offer that support, so that-that would be something that would be there for them as well.²⁷⁶

HMPPS has suggested that a modern slavery victim would be on the ‘Support’ part of the CSIP plan and staff could use this plan to monitor other individuals that may associate with the prisoner and to monitor how the individual is doing and what support they may need. It would also provide the individual a case manager to talk to and the plan gets reviewed on a regular basis.²⁷⁷

As previously noted, it is of critical importance to pay attention to appropriate framing when talking to potential survivors to be better able to identify their support needs and provide adequate response, including not depicting survivors as helpless victims.²⁷⁸ As one survivor pointed out, asking direct questions could be ‘very, very triggering (...) how are you going to come to someone and ask them have you been exploited, have you been trafficked? Do they even know what exploited or trafficked is?’²⁷⁹

When it comes to practices concerning release, SPOCs, NGOs, and police described their efforts to ensure that modern slavery survivors are supported upon release in order to facilitate their further recovery and prevent re-trafficking, which is not uncommon.²⁸⁰ For example, one SPOC described how they would start engaging with probation staff

²⁷³ SPOC Survey.

²⁷⁴ Stakeholder Interview 46 (NIPS, Northern Ireland).

²⁷⁵ Challenge, Support, and Intervention plan (CSIP) is the national case management model for managing those who pose a raised risk of being violent and was mandated for use across the adult prison estate from November 2018. This case management process is now being used in all prisons to support those individuals who are considered to pose a raised risk of harming others through their behaviour in custody. See Prison Reform Trust, ‘Safety in Prison, Information about Prisons’ Responsibility for Your Safety and Things They Can Do to Help Keep You Safe, Last Updated November 2022’ <<https://prisonreformtrust.org.uk/adviceguide/safety-in-prison/>>.

²⁷⁶ Stakeholder Interview 31, 32 (HMPPS SPOCs, England).

²⁷⁷ Informal conversation with HMPPS leadership.

²⁷⁸ Stakeholder Interview 14 (NGO, England) and Stakeholder Interview 31, 32 (HMPPS SPOCs, England).

²⁷⁹ Survivor Interview 08. See also University of Nottingham Rights Lab and Independent Anti-Slavery Commissioner, ‘Re-trafficking: The Current State of Play’ (November 2021) 12-15.

²⁸⁰ Stakeholder Interview 22 (Police, England) who noted that ‘There’s an issue of grooming potentially for exploitation outside of the prison, once people are released from prison, because I’ve seen some incidents of that.’

working in the community around 30 weeks before the expected release of a survivor. This was to make sure 'that allocated community offender manager was aware of conclusive grounds decision.'²⁸¹ This SPOC would instruct the probation staff to follow-up on this to ensure there is additional support available for the survivor upon release.²⁸² A case study discussed in Section V, based on an interview with a police officer in England, reveals how effective and time-sensitive information exchange between different actors could prevent potential re-exploitation of a modern slavery survivor upon their release and ensure that a person is directed to relevant support services in the community.²⁸³ The importance of this multi-agency approach was also echoed by an interview participant from a NGO in Wales who works closely with the Home Office Accommodation provider in Wales and other relevant actors like Immigration Intelligence and probation.²⁸⁴

In sum, given that the publication of the HMPPS Modern Slavery Guidance and implementation of the SPOC model are recent developments, the lack of systematic good practice is not surprising. However, the examples in this section provide a basis for potentially institutionalising examples of individual good practice into more systematic approaches.

The following are considered to be examples of good practice concerning victim identification, support and release/prevention of re-trafficking:

- prison staff being seconded to NGO to learn about modern slavery and support needs
- sharing the information about the person's NRM status with prisons and establishing regular communication channels between prisons, other public authorities and support organisations
- training and awareness raising of all prison staff, not just SPOCs
- providing information material and questionnaires at induction
- training of prison staff delivered in collaboration with NGO
- prisoner needs assessment developed by HMPPS and provision of support through CSIP plan
- Regular information exchange between prisons, probation officers and support organisations ahead of release.

However, more needs to be done to address the challenges discussed in Section V. For instance, the lack of awareness about the NRM even among individuals who have been referred to it or the issue of how to approach potential survivors of modern slavery in prisons and ask them about their experiences without re-traumatising or overwhelming them need to be urgently addressed. It is therefore vital to tackle these challenges in ongoing efforts to develop an overarching HMPPS Modern Slavery Guidance for Prison, Probation, and Youth Custody service as well as to develop similar guidance in Scotland and Northern Ireland.

²⁸¹ Stakeholder Interview 33 (HMPPS SPOC, England).

²⁸² Stakeholder Interview 33 (HMPPS SPOC, England).

²⁸³ Stakeholder Interview 22 (Police, England). Similarly, an NGO from Scotland emphasised the importance of exchanges between government institutions and NGOs about upcoming release of prisoners, Stakeholder Interview 11 (NGO, Scotland).

²⁸⁴ Stakeholder Interview 41 (NGO staff currently seconded to a police force, Wales).

VII. General Conclusions and Summary of Recommendations

This study assessed the practice of prisons in the UK on identifying and supporting survivors of modern slavery in light of the relevant international and domestic regulatory framework. Several conclusions and recommendations for improving both the legal and policy framework and institutional practice emerged from this assessment.

Overall, it has been found that prison is not a favourable environment for individuals who have experienced modern slavery, as it replicates the situation of unfreedom which characterises the experience of modern slavery. In such a situation, any efforts by prisons to facilitate survivors' recovery will be less effective than those of service providers working in the community.

When assessing the current practice of prisons in the UK, findings need to be interpreted in light of ongoing changes in the domestic legal framework on modern slavery, which have been directed towards reducing protection available to those survivors who have committed criminal offences. The study has nonetheless shown that international law binding on the UK does not provide a basis for excluding from protection those survivors of modern slavery who have committed criminal offences. On the contrary, international law expressly requires states to protect such individuals from prosecution and punishment when their offending has a relevant nexus with the experience of modern slavery. Even without such a relevant nexus, in cases where survivors are correctly imprisoned, they do not lose their status and associated rights to protection merely by the fact that they have committed criminal offences. The only situation when states would be justified in denying protection is when a person has claimed victim status illegitimately. Accordingly, prisons, like all other public authorities, are duty bound to provide protection and assistance to suspected or confirmed survivors of modern slavery in line with Article 4 ECHR and ECAT.

The problem however arises because of the absence of international guidance and comparative state practice to guide prison services in the UK when discharging their responsibilities. The HMPPS Modern Slavery Guidance for prisons in England and Wales published in January 2023 has been the first comprehensive attempt to design rules and procedures to be followed by prison staff who encounter survivors of modern slavery. While this study has identified a number of challenges in practice, the implementation of the HMPPS Modern Slavery Guidance has just started and the ongoing work on its further improvement may lead to positive changes that have not been captured in this research. Therefore, further research is required to monitor and assess any changes and progress in identifying and supporting victims of modern slavery in a prison setting.

Notably, some recommendations discussed below are already reflected to a certain degree in the HMPPS Modern Slavery Guidance and have been observed in practice, although on an ad hoc basis. Therefore, many recommendations are centred around the need to adopt a more comprehensive and systematic approach to providing support for survivors of modern slavery in prisons throughout the UK. While some of these recommendations are directed at prisons services in England and Wales, Scotland, and Northern Ireland, others are aimed at the Home Office and the UK Government. These recommendations are listed below, followed by a more detailed explanation of recommendations 1, 3, 4, 5, 7, and 8 in Annexe I.

- 1. It is recommended that the Home Office develops a systematic approach to sharing information with the UK's prison services about individuals entering the prison who have been referred to the NRM. Prisons should also be automatically notified by the competent authority of any NRM decisions which have been made for persons in prison.²⁸⁵**

The lack of systematic approach to information sharing among different actors represents a significant barrier to the identification of modern slavery survivors in prison and hinders the provision of support to such survivors in prison and post-release. It is therefore recommended that the Home Office develops and implements a systematic approach to sharing information with the UK's prison services about individuals entering prison who have previously been referred to the NRM. Prisons should be automatically notified by the relevant competent authority of any NRM decisions which have been made for persons in prison.

To ensure consistent support can be provided to survivors of modern slavery upon release from prison, information sharing and communication between prisons, local authorities, and service providers should also be improved and systematised, for example through the development of Memoranda of Understanding.

- 2. It is recommended that the UK Government collects and publishes data on the number of people referred to the NRM from prisons or identified as survivors of modern slavery while serving a prison sentence.**

While there is a sense emerging from the research findings that the issue of modern slavery survivors in prison is not a fringe concern, there is a lack of exact figures to highlight the true scale of this problem. Such data would raise awareness of this issue and provide evidence to ensure sufficient resources can be allocated to meet the support needs of survivors.

- 3. It is recommended that prison administration in all devolved jurisdictions in the UK should keep records of prisoners who are referred to the NRM and/or identified as victims of modern slavery while being in prison, as well as those potential victims who are not formally referred to the NRM. Communication among different prison departments and record keeping about referrals and identified survivors should be improved and systematised.²⁸⁶**

Even when survivors of modern slavery are identified, the lack of structured record keeping and communication between different prison departments represents a challenge to the provision of support. Prison administration in all devolved jurisdictions should ensure continuous information flow throughout the prison service and keep records of prisoners who are referred to the NRM and identified as survivors of modern slavery while in prison, as well as those individuals whom the prison staff considered to be potential victims of modern slavery (had reasonable grounds to believe they were victims) but who refused an interview with the FRO. Such records would improve institutional learning and evidence for future policy actions and facilitate access to support.

²⁸⁵ For further expansion on this recommendation refer to the Annex.

²⁸⁶ For further expansion on this recommendation refer to the Annex.

- 4. Prison administrations in all devolved jurisdictions in the UK should (continue to) develop and conduct training and awareness raising campaigns targeted at both prison staff and prisoners. Survivors of modern slavery with experience of being in prison in the UK and organisations working with survivors should have the opportunity to contribute to the design and delivery of training and awareness raising activities about modern slavery and the responses required by prisons. This should be coupled with efforts to improve the screening process and strengthen the knowledge of prison staff on the signs of modern slavery.²⁸⁷**

Improved awareness of modern slavery is necessary for strengthening the ability of prison staff to identify and support survivors. For survivors themselves, better knowledge of their rights is key to the realisation of said rights and being able to claim and access support. Further training and awareness raising campaigns about modern slavery, which is targeted at both prison staff and prisoners in the UK's prison services, should be designed and delivered by the prison administration in all three jurisdictions.

Opportunities for survivors of modern slavery with experience of being in prison in the UK and organisations working with survivors to contribute to the design and delivery of training and awareness raising should be actively promoted. It is recommended that prison administration in all three jurisdictions improve the screening process and continue to develop resources geared towards improving awareness among both prison staff and prisoners.

- 5. HMPPS Modern Slavery Guidance should expressly outline the nature and way of accessing support within prisons for those who are not part of the formal NRM, either by choice or due to public order disqualification. HMPPS/NIPS/SPS should ensure consistent practice of providing support to survivors of modern slavery in prisons in line with the established international standards, which require public authorities to take action as soon as there are reasonable grounds to believe that a person is a victim. The Government should provide adequate funding and resource allocation to enable them to provide the required level of support.²⁸⁸**

There are ongoing challenges in improving the approach of prisons to identifying and supporting survivors of modern slavery based on the HMPPS Modern Slavery Guidance due to a lack of available resources (human and budgetary). While the Guidance represents an important tool for strengthening the ability of prisons to identify and support survivors of modern slavery, practical changes remain dependent on sufficient resources to be made available.

It is recommended that government funding for specialist support for adult victims of modern slavery in the UK extends to supporting potential and confirmed victims of modern slavery in prison. This would require that the UK government and devolved administrations ensure that commissioned services in the new Modern Slavery Victims Contract (and equivalent specialist services in Scotland and Northern Ireland) have the required resources to provide support to potential and confirmed victims in prisons

²⁸⁷ For further expansion on this recommendation refer to the Annex.

²⁸⁸ For further expansion on this recommendation refer to the Annex.

- 6. Prisons should be alert to the risk of exploitation and further harm faced by survivors of modern slavery both while in the care of prisons and upon release. With the aim of reducing the risk of exploitation in prison, prison staff should ensure that risk assessments are conducted and potential or confirmed survivors of modern slavery do not share accommodation with known or suspected perpetrators of exploitation. With the consent of survivors, prisons should strive to improve communication and contact with the organisations delivering government funded specialist support for people referred to the NRM to enable persons leaving prison to access this support and reduce the risks of re-trafficking.**

Risks of re-exploitation were noted both in prison and upon release, particularly due to the noted challenges in identifying survivors and providing support and the lack of systematic approach to information sharing. Prisons should be alert to the risk of exploitation within prisons and upon release and should ensure that potential and confirmed survivors of modern slavery do not share accommodation with known or suspected perpetrators of exploitation. Prisons should also liaise with support organisations to ensure that survivors of modern slavery are not at risk of re-trafficking, including upon release to the community.

Improving awareness, knowledge and capacity of prison staff could also have a positive effect on reducing the risk of continued or renewed exploitation inside of the prison or upon release.²⁸⁹ This could be achieved by not putting them into the same wings or units as perpetrators of exploitation who could continue to exploit them inside of prison.²⁹⁰ In addition, as noted in the recommendation concerning improved communication among different actors, it is of vital importance to ensure that when a survivor of modern slavery is released from prison, the relevant authorities and support agencies are informed and able to put in place support to avoid the risk of re-trafficking.

- 7. The UK Government should ensure that the Public Order Disqualification in Section 63 (3) NABA is in line with international obligations binding on the UK.²⁹¹**

Public Order Disqualification of potential victims of modern slavery should be applied only in exceptional circumstances and the Government must prove in every case that an individual represents a threat to public order or has used the victim status illegitimately. In its current form, Section 63 (3) NABA, as amended by Section 29 IMA, is incompatible with obligations contained in the ECAT and the ECHR, which require public authorities to identify and protect every victim of human trafficking without exception and without discrimination, because they create a presumption that anyone sentenced to a term of imprisonment automatically is a threat to public order. The onus is then on victims or potential victims to refute such a presumption in order to access support.

- 8. It is recommended that the Home Office considers designating HMPPS/NIPS/SPS as First Responder Organisations (FROs) to be able to directly refer potential victims of modern slavery to the NRM alongside existing FROs currently making referrals in the prison context. Designated prison staff should receive continuous training to make such referrals.²⁹²**

Unlike other actors in the criminal justice system, prisons do not currently hold status of a First Responder Organisation, which may cause delays to the referral process and

²⁸⁹ Stakeholder Interviews 12 (Forensic Psychologist, England) and 21 (Police, England).

²⁹⁰ Stakeholder Interview 12 (Forensic Psychologist, England).

²⁹¹ For further expansion on this recommendation refer to the Annex.

²⁹² For further expansion on this recommendation refer to the Annex.

place further strain on the capacity of already overburdened support organisations. As further explained in Annex 1, while there is no unanimous view among the stakeholders, it is recommended that the Home Office designates prisons or HMPPS/NIPS/SNS as First Responders to enable them to directly refer potential victims of modern slavery to the NRM. To achieve that, designated prison staff should receive training on how to make referrals. Notably, in light of the numerous challenges noted regarding disclosure and trust, this recommendation is premised on prison service not being the only FRO able to make referrals from prisons. Instead, individuals should still have the option available to them to be referred by a different FRO.

9. It is recommended that the NIPS and SPS produce modern slavery guidance for its staff and establish a SPOC model (or equivalent thereof).

It is recommended that the Northern Ireland Prison Service and Scottish Prison Service produce modern slavery guidance for its staff to ensure a systematic approach to identifying and responding to potential victims of modern slavery. The modern slavery guidance developed by HMPPS would be a useful template for this work.

It is also recommended that NIPS and SPS establish modern slavery SPOCs in each of their prisons to contribute to improving awareness and the responses to potential and confirmed victims of modern slavery.

10. Additional research on the experiences of survivors of modern slavery who are imprisoned in the UK and in other countries should be conducted.

There is a dearth of research on the identification and response to victims of modern slavery in the UK and internationally. Further research is needed to better understand this issue and to generate evidence which can contribute to improved policy, legislation and practice. In particular, further research in the UK will be necessary to understand the long-term impacts of the substantive reforms in how HMPPS is addressing this issue.

Annex - Recommendations

The study made, in Section VII, several recommendations for improving both the legal and policy framework and institutional practice pertaining to the identification and protection of survivors of modern slavery in the prison context in the UK. The following discussion provides a more detailed explanation of some of these recommendations (notably Recommendations 1, 3, 4, 5, 7, and 8) with additional context grounded in the empirical findings.

Recommendation 1:

It is recommended that the Home Office develops a systematic approach to sharing information with the UK's prison services about individuals entering the prison who have been referred to the NRM. Prisons should also be automatically notified by the competent authority of any NRM decisions which have been made for persons in prison.

A lack of systematic approach to information sharing among different actors represented a significant barrier to the identification of modern slavery survivors in prison and hindered the provision of support to such survivors in prison and post-release. It is therefore recommended that the Home Office develops and implements a systematic approach to sharing information with the UK's prison services about individuals entering prison who have previously been referred to the NRM. Prisons should be notified by the relevant competent authority of any NRM decisions which have been made for persons in prison.

To ensure consistent support can be provided to survivors of modern slavery upon release from prison, information sharing and communication between prisons, local authorities, and service providers should also be improved and systematised.

The research revealed a lack of consistent approach towards communication between different authorities regarding identification and NRM referrals for survivors of modern slavery in prison.²⁹³ If prisons are aware that an individual is in the NRM earlier on, this would allow them to then better implement the safeguarding and support measures that should be put into place when a potential survivor of modern slavery is identified.²⁹⁴

When identification has taken place before an individual is sent to prison, this needs to be communicated to enable prison staff to start putting in place the necessary support structures before the individual enters the prison. Similarly, proactive information sharing among agencies and different actors involved in the criminal justice system is an integral aspect of providing continuity of care when an individual identified as a potential survivor of modern slavery is released from prison.²⁹⁵ In these regards, prisons could follow the approach already recommended for other concerns, for example for care leavers,²⁹⁶

²⁹³ SPOC Survey; Stakeholder Interviews 25 (Legal England) and 28 (HMPPS SPOC, Wales).

²⁹⁴ Stakeholder Interviews 28 (HMPPS SPOC, Wales) and 39 (HMPPS SPOC, England).

²⁹⁵ Stakeholder Interview 37 (HMPPS SPOC, England).

²⁹⁶ See for example, HMPPS and Believe in Children Barnardo's, 'Toolkit for Supporting Care Leavers in Custody 2019' <<https://www.nicco.org.uk/userfiles/downloads/5d356df6f345a-toolkit-for-supporting-care-leavers-in-custody.pdf>>; HMPPS, 'Strategy for Care Experienced People' <https://hmppsintranet.org.uk/uploads/6.6018_HMPPS_People%20with%20care%20experience%20strategy_WEB.pdf>; HMPPS, 'Care Experience Matters. A Guide to How Prisons, Probation and Local Authorities Can Work Together to Support People with Care Experience in Custody and on Probation' (2023) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1141299/care-experience-matters.pdf>.

those with mental health concerns or at risk of self-harm,²⁹⁷ with a substance misuse need²⁹⁸ etc.

The research also highlighted concerns about the current approach to bail and release and considered measures which could be adopted by prisons to improve safeguarding upon release. For example, one research participant from an NGO in England suggested that flagging modern slavery should be included as part of the Offender Management Unit (OMU) probation assessment conducted by the prison before release.²⁹⁹ This could be an important step for ensuring that when a survivor of modern slavery is released from prison, the relevant authorities are informed and better able to put in place support.³⁰⁰ Another research participant stated that the approach taken needed to be more proactive. They suggested that when an individual is identified, more longer-term planning (of at least six months) should be developed that already considers the eventuality of their release and the kind of support that should be in place in advance.³⁰¹

Recommendation 3:

It is recommended that prison administration in all devolved jurisdictions in the UK should keep records of prisoners who are referred to the NRM and/or identified as victims of modern slavery while being in prison, as well as those potential victims who are not formally referred to the NRM. Communication among different prison departments and record keeping about referrals and identified survivors should be improved and systematised.

Even when survivors of modern slavery are identified, the lack of structured record keeping and communication among different prison departments represented a challenge to the provision of support. It is therefore recommended that prison administration in all three jurisdictions maintain continuous information flow throughout the prison service. It is further recommended that prison administration keep records of prisoners who are referred to the NRM and identified as survivors of modern slavery while in prison, as well as those individuals whom the prison staff considered to be potential victims of modern slavery (had reasonable grounds to believe they were victims) but who refused an interview with the FRO. Such records would improve institutional learning and evidence for future policy actions and facilitate access to support.

Alongside a need for better communication and information structures among the different agencies involved in victim identification and support, a need for the same within the various departments of the prison itself was also noted by research participants.³⁰² This was perceived as crucial for ensuring that access to support for

²⁹⁷ See for example, Criminal Justice Joint Inspection, Care Quality Commission and Healthcare Inspectorate Wales, 'A Joint Thematic Inspection of the Criminal Justice Journey for Individuals with Mental Health Needs and Disorders' (2021) <<https://www.justiceinspectores.gov.uk/cjji/wp-content/uploads/sites/2/2021/11/Mental-health-joint-thematic-report.pdf>>; HMPPS and others, 'An Updated Response to: A Joint Thematic Inspection of the Criminal Justice Journey for Individuals with Mental Health Needs and Disorders' <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1146908/Updated_response_to_the_Joint_Thematic_Mental_Health_Needs_and_Disorders_action_plan.pdf>, particularly recommendations 3, 4, and 11.

²⁹⁸ See for example, Public Health England, 'Continuity of Care for Adult Prisoners with a Substance Misuse Need, Report on the London "Deep Dive"' (2018) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/760266/ContinuityofCareinLondon.pdf>; Public Health England, Guidance for improving continuity of care between prison and the community, updated 30 November 2018.

²⁹⁹ Stakeholder Interview 04 (NGO, England).

³⁰⁰ Stakeholder Interviews 04 and 09 (NGO, England).

³⁰¹ Stakeholder Interview 11 (NGO, Scotland).

³⁰² SPOC Survey; Stakeholder Interviews 09 (NGO, England) and 26 (HMPPS SPOC, England).

survivors of modern slavery was triggered.³⁰³ Along this line, it was suggested that a recognisable alert should go on the NOMIS of potential victims.³⁰⁴ Suggestions for improving communication included improved knowledge on the chain of responsibilities in different departments to notify one another, as well as clearer expectations and streamlined processes over who should access information and what should be done with information. Improving systems for data and information sharing within the prison thus needs to be accompanied with increased awareness and training for prison staff concerning modern slavery.

Recommendation 4:

Prison administrations in all devolved jurisdictions in the UK should (continue to) develop and conduct training and awareness raising campaigns targeted at both prison staff and prisoners. Survivors of modern slavery with experience of being in prison in the UK and organisations working with survivors should have the opportunity to contribute to the design and delivery of training and awareness raising activities about modern slavery and the responses required by prisons. This should be coupled with efforts to improve the screening process and strengthen the knowledge of prison staff on the signs of modern slavery.

Resources designed to help prison staff identify potential victims which list indicators of modern slavery should be reviewed and updated to ensure their relevance in the prison context and should be framed in a language that avoids triggering survivors and has the potential to facilitate disclosure.

Improved awareness of modern slavery was perceived as necessary for strengthening the ability of prison staff to identify and support survivors. For survivors themselves, better knowledge of their rights was considered key to the realisation of said rights and being able to claim and access support. Further and continuous training and awareness raising campaigns about modern slavery which is targeted at both prison staff and prisoners in the UK's prison services should be designed and delivered by the prison administration in all three jurisdictions. It is also recommended that prison administration in all three jurisdictions improve the screening process and continue to develop resources geared towards improving awareness among both prison staff and prisoners.

Prison administration in all devolved jurisdictions in the UK should ensure that awareness raising material and information about support available to survivors of modern slavery in prison is accessible, non-stigmatising and available in multiple languages. Other opportunities to raise awareness among prisoners should be explored (i.e. adverts on prison radios).

Resources designed to help prison staff identify potential victims which list indicators of modern slavery should be reviewed and updated to ensure their relevance in the prison context.

SPS and NIPS should produce similar resources to HMPP's information leaflet about modern slavery for prisoners, contextualised to the circumstances in their jurisdictions.

Survivors of modern slavery with experience of being in prison in the UK and organisations working with survivors should have the opportunity to contribute to the

³⁰³ Stakeholder Interview 09 (NGO, England).

³⁰⁴ SPOC Survey.

design and delivery of training and awareness raising about modern slavery and the responses required by prisons.

Significantly, the research has revealed that prison staff (as well as other authorities in the criminal justice system) can be perceived as sceptical of survivors.³⁰⁵ Some NGOs noted that prison staff may believe that individuals might attempt to lie about being a survivor in order to access support.³⁰⁶ Some survivors additionally stated that they felt their stories had not been believed by prison staff.³⁰⁷ The existing challenges around disclosure in a prison environment, particularly the sense of shame and fear or the risk of re-traumatisation during disclosure, might be exacerbated when survivors are met with disbelief.

Accordingly, awareness raising efforts for prison staff should follow a trauma-based approach to facilitate disclosure and in turn better identification and support of the survivors of modern slavery in prisons.³⁰⁸ This is also a crucial step towards encouraging disclosure to prison staff should prison staff be made first responders and take on the role of conducting NRM referrals. One SPOC recommended that training for prison staff include sensitisation on how to initiate conversations around modern slavery and how to further conversations with those who have already been identified previously.³⁰⁹ Having dedicated prison staff well-trained on issues around trauma, grooming, domestic violence, human trafficking etc. was considered key to improving identification and facilitating provision of support to potential survivors of modern slavery.³¹⁰

Furthermore, while having dedicated focal points in the role of SPOCs was noted as a positive improvement, a need to increase capacity and understanding for all prison staff was viewed as important given that different staff have contact with potential survivors at different stages.³¹¹ For example, some SPOCs recommended that induction and reception staff in particular required more training as they might be well-placed to identify potential survivors of modern slavery early on.³¹² The research therefore highlights the need for strengthening the screening process. For example, when someone enters prison with a conviction for a crime where there is a known high prevalence of criminal exploitation such as cannabis cultivation or county lines drug offences, modern slavery and human trafficking this should flag a specific screening process.³¹³

Similarly, the release of Modern Slavery Guidance for prisons in England and Wales and upcoming release of Modern Slavery Policy for Prison, Probation, and Youth Custody Service by HMPPS was perceived favourably, although several SPOCs emphasized the need to accompany these efforts with training, awareness raising, and active engagement with prison staff.³¹⁴ One SPOC recommended conducting periodic 'dip tests' among different staff (not only those with specific assigned duties towards supporting survivors of modern slavery) to review awareness.³¹⁵

³⁰⁵ Stakeholder Interview 08 (Legal, Scotland) and Survivor Interviews 01, 02, 04.

³⁰⁶ Stakeholder Interview 45 (NGO, England).

³⁰⁷ Survivor Interviews 02 and 04.

³⁰⁸ Stakeholder Interviews 15 (NGO, England) and 08 (Legal, Scotland) and 45 (NGO, England). Survivor Interviews 04 and 06.

³⁰⁹ Stakeholder Interview 38 (HMPPS SPOC, England).

³¹⁰ SPOC Survey; Stakeholder Interviews 05 (NGO, Northern Ireland), 19 and 20 (NGO Scotland), 22 (Police, England), 24 (Expert Witness, England), 28 (HMPPS SPOC, Wales), 31 and 32 (HMPPS SPOC, England).

³¹¹ Stakeholder Interview 16 (NGO, England).

³¹² SPOC Survey.

³¹³ Stakeholder Interview 09 (NGO, England).

³¹⁴ SPOC Survey; Stakeholder Interview 35 (HMPPS SPOC, England).

³¹⁵ Stakeholder Interview 36 (HMPPS SPOC, England).

Training should also include making staff aware of which support organisations should be contacted if a survivor is identified and the pathways for doing so.³¹⁶ Some research participants felt that while it was important for prison staff to be made more aware of the support available from organisations embedded within the prison, this also needed to be coupled with upskilling support organisations and increasing their resources/capacity.³¹⁷

The research found that in addition to training and awareness raising initiatives directed at prison staff, an increased awareness and knowledge of rights and of the support available in prisons was a prerequisite for survivors to access relevant support.³¹⁸ This involves ensuring that potential survivors of modern slavery in prison are informed about which support agencies they can contact, know how to do so, and have the means to do so safely.³¹⁹ To facilitate early identification and access to support when needed, this information could be provided as part of the induction process when entering prison.

On a practical level, awareness raising material and information about support for survivors of modern slavery in prison should be made available in multiple languages and at different points throughout their time in the criminal justice system. It is of particular importance to use language that is accessible and not alienating to survivors of modern slavery.³²⁰ Other opportunities to raise awareness among prisoners should be explored, e.g. adverts on prison radios.

Recommendation 5:

HMPPS Modern Slavery Guidance should expressly outline the nature and way of accessing support within prisons for those who are not part of the formal NRM, either by choice or due to public order disqualification. HMPPS/NIPS/SPS should ensure consistent practice of providing support to survivors of modern slavery in prisons in line with the established international standards, which require public authorities to take action as soon as there are reasonable grounds to believe that a person is a victim. The Government should provide adequate funding and resource allocation to enable them to provide the required level of support.

It is recommended that the UK Government and devolved administrations ensure that commissioned services in the new Modern Slavery Victim Care Contract (and equivalent specialist services in Scotland and Northern Ireland) are properly resourced to provide support to potential and confirmed victims in prisons.

Several SPOCs noted challenges in implementing improvements to the prison's approach to supporting survivors of modern slavery based on the HMPPS Modern Slavery Guidance due to a lack of available resources (human and budgetary).³²¹ While the Guidance represents an important tool for strengthening the ability of prisons to identify and support survivors of modern slavery, practical changes remain dependent on sufficient resources to be made available. In the community setting, survivors of modern slavery are entitled to access Government-funded support through the MSVCC, including accommodation, material assistance, financial support and other kinds of assistance. However, under the MSVCC, those potential or confirmed survivors of modern slavery who are in prison should be provided with access to support services as required through the already existing services within the establishment. As highlighted by the findings of this research study, the general services available in prison may be

³¹⁶ Stakeholder Interviews 08 (Legal, Scotland) and 12 (Forensic Psychologist, England).

³¹⁷ Stakeholder Interviews 22 (Police, England), 24 (Expert Witness, England) and 41 (NGO, Wales).

³¹⁸ Stakeholder Interviews 08 (Legal, Scotland), 12 (Forensic Psychologist, England), 41 (NGO, Wales), SPOC Survey.

³¹⁹ Stakeholder Interview 08 (Legal, Scotland).

³²⁰ Survivor Interview 08 and joint workshop discussion.

³²¹ SPOC Survey; Stakeholder Interview 35 (HMPPS SPOC, England).

insufficient to meet the unique protection needs of survivors of modern slavery. The lack of specialised support available in prisons may leave survivors of modern slavery particularly vulnerable to the risk of re-exploitation both in prison and upon release.

To ensure that survivors of modern slavery in prison equally are able to access the specialised support and care to which they are entitled, commissioned services in the MSVCC should be adequately resourced to provide support also to modern slavery survivors in prison, not only in the community. Given the noted particular vulnerability and risk of re-exploitation faced by survivors of modern slavery when released from prison, this could also help to ensure a continuity of care with the aim of proactively reducing such risk.

Recommendation 7:

The UK Government should ensure that the Public Order Disqualification in Section 63 (3) NABA is in line with international obligations binding on the UK.

Public Order Disqualification of potential victims of modern slavery should be applied only in exceptional circumstances and the Government must demonstrate in every case that an individual represents a threat to public order or has used the victim status illegitimately.

Neither victims of modern slavery whose criminal offences were committed as a direct consequence of their exploitation nor victims whose criminal offences were unrelated to their status as a victim of modern slavery should be denied the support and assistance available to victims of modern slavery on the basis of having received a custodial sentence, unless it is established that victims' status has been 'illegitimately used'. As explained in Section IV, there is no basis for such an exclusion in international law governing the protection of survivors of modern slavery and human trafficking.

Not only would such disqualification be in breach of the UK's international legal obligations to identify, assist and protect all victims of modern slavery 'without discrimination and without exception' as guaranteed by Articles 4 and 14 ECHR and Articles 3, 10 and 12 ECAT, but it could also violate its duty to investigate modern slavery offences and prosecute the perpetrators, which applies to all instances of trafficking or slavery, regardless of whether the victim had been convicted of an offence.³²² Namely, evidence suggests that the exclusion of victims who have committed offences from the available protection would limit their involvement in any investigations, prosecutions, and criminal proceedings.³²³

Furthermore, criminal convictions and imprisonment of victims risks resulting in their further exploitation and re-victimisation. The Joint Committee on Human Rights noted that 'there is a significant body of evidence that organised gangs deliberately target vulnerable people, and specifically target those recently released from prison, as potential victims of slavery or trafficking'.³²⁴ In line with that, on 26 July 2023, the High Court has ordered that the Secretary of State for the Home Department must not exercise her public order disqualification powers to remove support from potential victims of modern slavery pending trial unless she first conducts and takes account of an

³²² See for instance, UK Parliament Joint Committee on Human Rights, 'Legislative Scrutiny: Nationality and Borders Bill (Part 5). 5 Victims That Won't Receive Protection: The Public Order and Bad Faith Exceptions - Will Excluding Some Victims Impact on the UK's Ability to Investigate and Prosecute Perpetrators of Slavery and Human Trafficking?' paras 51–53
<<https://publications.parliament.uk/pa/jt5802/jtselect/jtrights/964/96408.htm>>.

³²³ House of Commons, House of Lords Joint Committee on Human Rights 'Legislative Scrutiny: Nationality and Borders Bill (Part 5) - Modern Slavery' (15 December 2021) paras 50-53.

³²⁴ *ibid* para 51.

assessment of the risks of re-trafficking.³²⁵ A further hearing into the legality of the policy is due to be heard at the end of October 2023.

Notably, in addition to the need to consider whether and how public order disqualification may result in 'a real and immediate risk of being re-trafficked', which must be accounted for in making a decision in individual cases, it is important to remember that any disqualification from protection is an exception to an express protective obligation, and as such, ought to be very narrowly construed. In other words, even if an individual is not at risk of being re-trafficked, any exclusion from protection must be justified by the Government on public order grounds. The burden lies squarely on the Government to show that a person is a threat to public order (or has claimed the status in bad faith).³²⁶ It is contrary to international obligations binding on the UK to require a victim, or potential victim, to disprove the presumption that they are a threat to public order solely because they are sentenced to imprisonment.

Recommendation 8:

It is recommended that the Home Office consider designating HMPPS/SPS/NIPS as FROs to be able to directly refer potential victims of modern slavery to the NRM alongside existing FROs currently making referrals in the prison context. Designated prison staff should receive continuous training to make such referrals.

Unlike other actors in the criminal justice system, prisons do not currently hold status of a First Responder Organisation, which may cause delays to the referral process and place further strain on the capacity of already overburdened support organisations. Designating HMPPS/NIPS/SPS as First Responders would enable them to directly refer potential victims of modern slavery to the NRM. To achieve that, designated prison staff should receive training to make referrals. However, in light of the numerous challenges noted regarding disclosure and trust, this recommendation is premised on prison service not being the only FRO able to make referrals from prisons. Instead, individuals should still have the option available to them to be referred by a different FRO.

The HMPPS Modern Slavery Guidance should be updated to highlight the need to ensure that there is sufficient time for FRO interviews and require that such interviews are done in private.

A central question in the discussion around recommendations was whether or not prison staff (and/or HMPPS, SNS, and NIPS) should be first responders able to make referrals to the NRM. Research participants expressed different viewpoints on this issue – the main reasons for and against have been summarised below.

Overall, it emerges from this discussion that, despite noted concerns discussed below, it would be beneficial for prison staff to have first responder status and that many of the reasons against can be countered by developing a more systematised approach to modern slavery in prisons. This would also be consistent with calls from the modern slavery sector for more organisations to become FROs. However, this recommendation is premised on prison service not being the only FRO to make referrals from prisons. Instead, individuals should still have the option available to them to be referred by a different FRO.

³²⁵ Matrix Chambers (n 64).

³²⁶ GRETA, Council of Europe, 'Written Evidence Submitted to the Joint Committee on Human Rights, Legislative Scrutiny: Illegal Migration Bill (IMB0024)' (n 21) para 16.

Those who thought that prison staff should not be first responders highlighted the following common concerns:

Time, capacity, and resource concerns: SPOCs and other prison staff were perceived as already having too many other responsibilities, too much work and too little time.³²⁷ This was expanded on by some SPOCs who felt that, in principle, prison staff should be able to make NRM referrals but that this would require additional resources to be made available. Concerns were voiced that the lack of resources for prison staff to do even their basic duties would mean this work would ‘take a back seat’ or be ‘completed to a low standard’.³²⁸

Staff turnover: In addition to a lack of time, capacity, and resources available to prison staff a high rate of staff turnover and low staff retention were also cited by several SPOCs as a reason why they felt prison staff should not be first responders. It was felt that these issues would prevent ‘a consistent approach across all establishments in order to support victims of modern slavery’.³²⁹

Lack of understanding and knowledge: Lack of understanding among prison staff about modern slavery and how to report it were also cited as a reason against prison staff being first responders.⁵ It was stated that other first responders would have a better understanding due to the frequency/continuity with which they were doing referrals than prison staff due to a perception that the issue might arise only on infrequent occasions.⁶

This underlines the need for increased training among prison staff. As voiced by one research participant, to ‘properly understand all the issues around modern slavery takes many years of experience.’³³⁰ If prison staff are to be made first responders, this must be accompanied by efforts to develop a proper understanding of modern slavery (and the UK modern slavery framework). This is expected to have a positive effect on the ability of prison staff to identify potential survivors of modern slavery and better assist them in accessing the support they are entitled to.³³¹

Lack of trust: The lack of understanding and awareness is in some ways closely tied to the barriers to disclosure highlighted in the challenges section of this report, notably the lack of trust between prison staff and those in prison. The potential lack of trust by survivors towards prison staff was cited as a reason against making them first responders by several key research participants.³³² The apparent attitudes of some prison staff towards prisoners - seeing the prisoners only in light of their convictions and as perpetrators - is also relevant in this regard.³³³ These aspects contributed to concerns related to a power imbalance and a resulting two-way lack of trust that could impact ‘the quality of potential referrals and the attitude of prison staff.’³³⁴

These concerns can in part be assuaged by integrating prison staff as first responders alongside the existing system of independent first responders from support organisations. As noted in the section discussing challenges (section V), there are multiple valid reasons why some survivors of modern slavery might not feel comfortable

³²⁷ SPOC Survey.

³²⁸ SPOC Survey.

³²⁹ SPOC Survey.

³³⁰ Stakeholder Interview 02 (Legal, England).

³³¹ As also discussed in Section 3 of this report ‘Prevalence of Survivors of Modern Slavery in Prison’ and Section VI ‘Good Practices’. For a more detailed discussion on this issue see also the recommendation on training and awareness raising in this section.

³³² Stakeholder Interviews 09 (NGO, England), 13 (Legal, England), 38 and 39 (HMPPS SPOC, England).

³³³ Stakeholder Interviews 09, 14, and 18 (NGO, England).

³³⁴ Stakeholder Interview 09 (NGO, England).

disclosing their experiences to prison staff. Making prison staff first responders alongside support organisations would, however, increase the options available to survivors and increase capacity for making referrals while still allowing a degree of choice regarding with whom to interact. For those who do not feel comfortable or able to disclose to prison staff directly, the option to disclose to a first responder support organisation with presence in the prison would still be available. As noted in both the SPOC survey and throughout the interviews with research participants, increasing awareness and knowledge would be a crucial component to making prison staff first responders.³³⁵

Additional benefits from making prison staff first responders were highlighted by those research participants who expressed their support for this policy change, notably by many of the SPOCs who participated in the survey.³³⁶ It was noted by several SPOCs that they 'cannot understand why HMPPS are not a first responder organisation' and that 'it does not make sense for us [prison staff] not to be'.³³⁷ The common themes emerging from their reasoning have been summarised below:

Existing relationship: In a contrasting view to those who expressed concerns about a lack of trust negatively affecting disclosure, some SPOCs felt that they had an existing relationship, or were able to develop trusting relationships, with individuals in prison which could facilitate disclosure.³³⁸ It was mentioned that prison staff might have more opportunities to obtain information than other first responders, and would thus be a natural first point of contact or be the first people to receive disclosures. From their view, being then able to conduct the referral themselves without going through a third-party would then potentially be less problematic or re-traumatising for the victim.³³⁹

Speed up the referral process: Several SPOCs felt that prison staff being themselves able to act as first responders would prevent delays in making referrals and speed up what they felt was currently an 'unnecessarily bureaucratic and complicated process'.³⁴⁰ Difficulties getting in contact with first responder support organisations, who were also perceived as overburdened and lacking capacity, were also cited.³⁴¹ One SPOC in a remand jail also noted that cases 'could get missed if the referral is not picked up quick enough' and individuals are transferred before completion of their referral.³⁴²

Shared caseload burden: It appears that concerns were common that both prison staff and support organisations acting as first responders already suffered from a lack of capacity and being overburdened. Adding additional first responders, by making HMPPS a first responder organisation, would require a commitment to increase capacity among prison staff. This could then serve as an important tool for decreasing the burden currently placed on what appears to be an overstretched system of first responder support organisations with the goal of more efficiently providing support to survivors of modern slavery in prison.

The concerns related to overburdening and a lack of capacity then leads into another question of if HMPPS were to become a FRO, who within HMPPS would be responsible for making NRM referrals? Research participants offered a range of suggestions. Some

³³⁵ SPOC Survey; Stakeholder Interviews 18 (NGO, England), 19 and 20 (NGO, Scotland), 23 and 25 (Legal, England), 24 (Expert witness, England), 27, 33, 37 (HMPPS SPOC, England) and 27 (HMPPS, England).

³³⁶ Of those 50 SPOCs who participated in the SPOC Survey, 28 felt positively that prison staff should be made first responders.

³³⁷ SPOC Survey.

³³⁸ SPOC Survey.

³³⁹ SPOC Survey.

³⁴⁰ SPOC Survey.

³⁴¹ SPOC Survey.

³⁴² SPOC Survey.

felt that SPOCs would be best placed to be first responders, as they would have the best knowledge about concerns related to modern slavery among prison staff. Others felt that it would make sense for the first responder to be in a more neutral 'middle ground' position – it was noted that not being in a uniformed position could facilitate overcoming barriers related a lack of disclosure due to mistrust in authorities. Another suggestion was to have a dedicated position for first responders within HMPPS, but to establish this as a roving position spanning across multiple prisons in the same region.

Finally, the discussion around pros and cons of making prison staff first responders is closely linked to the other recommendations emerging from this research. Whether or not HMPPS ultimately becomes a FRO, there is a clear need to strengthen relationships and communication with existing First Responders (who would in any case continue to provide support services to those in custody). Similarly, increased training and awareness of modern slavery for prison staff serves as a foundation for meeting the protection needs of survivors of modern slavery in prison and would be a necessary precondition to HMPPS becoming a First Responder Organisation.

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