

## Case Studies

### Impact of the Illegal Migration Bill in Scotland

#### June 2023

#### About the Case Studies

The following case studies are an anonymised and generalised account of an adult victim of trafficking and an unaccompanied asylum seeking child who our legal teams might have legally represented over the past year.

We have provided a brief summary of the key facts of both cases, as well as an analysis of what *would happen to each of them* under the Illegal Migration Bill, if they had arrived in the UK after 7<sup>th</sup> March 2023.

We have put together these case studies in order to illustrate the real life impact of this proposed Bill for people seeking safety from harm and exploitation in Scotland – and the significant and substantial reduction of protection that will result, if this Bill is passed.

#### Case study 1: Lian, an Adult Victim of Trafficking

Lian\* is a Chinese national woman who was forced into a marriage when she was around 17 years old. Lian's husband developed drug, alcohol, and gambling addictions and started to be violent towards Lian and their son. Lian asked her family to help her escape the abuse, but they told her she had to stay with her husband. In 2019, because of her husband's drug and gambling debts, Lian was forced to borrow money from a loan shark at 50% interest, to give to her husband.

When the time came to repay the loan, Lian didn't have enough money. After a period of being threatened and abused by the loan shark in pursuit of his money, the loan shark told Lian she had to work abroad to repay the money owed. Lian thought she would be working in hospitality.

Lian was made to borrow more money from another loan shark to facilitate her travel. A 6-month UK tourist visa was arranged for her, using false information. Lian was first taken to Spain for a week, where she was kept in a flat along with other Chinese nationals and taught English phrases.

#### Pre-Illegal Migration Bill – Lian entered the UK in 2020

Lian flew from Spain to the UK in 2020. She was met by a man who took her to a flat and handed her over to two white men. The men subjected Lian to severe sexual

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violence then moved her across the UK forcing her to prostitute, from various premises. Any money she was paid was taken by the traffickers. The traffickers often beat Lian and threatened to kill her if she tried to escape, ensuring her compliance.

Lian was encountered by two police forces in two different premises which they had attended due to reports that they may be being used as brothels. Both times Lian's documents were checked and as she had a valid visa, no further action was taken.

In 2021, Lian was again encountered by the police. As this point her visa had expired, and police arranged for Lian to be sent to an immigration detention centre. Lian was terrified of being returned to China because she was certain the loan shark and trafficker would kill her or re-traffic her due to the debt owed. Lian was also terrified of disclosing her experiences in the UK because she was certain her traffickers here would find her and kill her.

Lian claimed asylum in the detention centre and got a solicitor to represent her. During a meeting with her solicitor, Lian alluded to being forced to work. Concerns were raised with the Home Office who referred her to the National Referral Mechanism (NRM) to be identified as a victim of trafficking. Lian was interviewed by male officers. Due to fearing reprisals from her traffickers in the UK, and the trauma and shame she was experiencing, Lian was unable to disclose her experiences. Lian also feared some of the other detainees had links to her traffickers.

As a result, the Home Office determined that there were no reasonable grounds to suspect that Lian was a victim of trafficking. Her asylum claim was refused on the basis of her credibility; the Home Office did not believe her account. She started self-harming.

Removal directions were issued against Lian. She reengaged her solicitor who managed to lodge a judicial review against removal. In 2022, Lian was released from detention. She had been given an address in Glasgow by another detainee, which she gave to the Home Office to facilitate her release. When Lian went to the address given, she was met by a man and a woman who sexually abused her then forced her to prostitute from the address.

Lian was recovered by Police Scotland from the premises and referred to the TARA service for support and assistance.

TARA provided intense support to Lian and referred her to the NRM again in relation to her exploitation in Scotland. Lian was referred to JRS for legal representation, and JRS was successful in securing a grant of Refugee Status for her, with 5 years' leave to remain. She was also conclusively recognised as a victim of trafficking through the NRM in relation to all her experiences of exploitation since she had arrived in the UK.

## **Post-Illegal Migration Bill – Lian entered the UK on 8<sup>th</sup> March 2023**

If Lian arrived in the UK on or after 7 March 2023 then she would likely meet the terms of Clause 2, because her visit visa was obtained via deception. In any event, there are many victims in Lian's position who are moved in the UK through other 'illegal' means. As such, she would be subject to the removal duty in Clause 2, because there is no exception for persons entered into the NRM (Clause 4(1)). A removal notice would be issued for removal to Rwanda, as the only 'safe third country' with which the UK has a returns agreement. She would be either detained pending removal, or housed in a hotel or other temporary accommodation (ferry, barge etc.).

Lian's case shows that exploitative situations and organised crime gangs are difficult and dangerous to extricate victims from, as well as the difficulties victims face in trusting authorities, resulting in delayed or piece-meal disclosure. It was only once support was provided in Scotland through TARA that Lian's circumstances were able to come to light. Clause 23 will prohibit Lian from accessing this support anywhere in the UK, even if the Single Competent Authority believes that she is a victim of trafficking. Clause 21 prohibits her from obtaining Victim Temporary Stay (limited leave to remain in certain circumstances relating to trafficking).

To meet the very narrow exception to the prohibition on support, she would need to be co-operating with a public authority into an investigation or criminal proceedings (Clause 23(3)). As Lian's story suggests, she was unable to disclose the nature and extent of the exploitation she suffered until support had been provided, some years after her arrival in the UK. Ultimately, it took Lian being re-trafficked in the Scotland for her to be recognised as a refugee; without support and advocacy from TARA and JRS it is unlikely her account would ever have come to light, or that she would have achieved protection here.

## **Case Study 2 – Muhammad, an Unaccompanied Migrant Child**

Muhammad\* is a 17-year-old Afghan national. In Afghanistan, Muhammad went to school and spent time with his family, his parents and 5 younger siblings. In the summer of 2021, the Taliban took over Muhammad's home area and they started coming to his house demanding for Muhammad to join them. They would beat his family when they came. Some of the neighbours in similar situations were murdered by the Taliban.

Muhammad's father eventually told him he had to leave Afghanistan because he was not safe there anymore. Muhammad's family could not afford to pay for everyone to leave but Muhammad's father managed to pay a smuggler who agreed to get Muhammad to safety. He left Afghanistan in September 2022. Under the control of the smuggler, Muhammad travelled through Iran, Turkey and several European countries. Once they reached Calais, the smuggler forced Muhammad to board a dinghy to the UK. On arrival to the UK, Muhammad claimed asylum.

### **Pre-Illegal Migration Bill- Muhammad entered the UK in February 2023**

After he arrived in Kent and claimed asylum, the Home Office referred Muhammad's case to North Lanarkshire Council under the National Transfer Scheme. In March 2023, Muhammad moved to North Lanarkshire and he has been looked after and accommodated by the local authority since then, under Section 25 of the Children (Scotland) Act 1995. Under Section 25, Muhammad is entitled to accommodation provided by Social Work as well as financial support of between £50 and £100 per week. He can stay in either a family setting (foster care) or in a flat sourced and paid for by Social Work. Muhammad is also allocated a social worker to look after him and a guardian at the Scottish Guardianship Service to support him through the asylum process.

Muhammad has experienced significant trauma from his experiences in Afghanistan, leaving his family, and his journey to the UK. He has expressed suicidal thoughts. He is registered with his local GP and he receives medication for anxiety and depression. He receives mental health counselling support through a local service in North Lanarkshire. Both his guardian and social worker are keenly aware of Muhammad's poor mental health.

Muhammad will be entitled to Social Work support until he turns 26, under Section 29 of the Children (Scotland) Act 1995. If Muhammad is successful in his asylum claim, he obtains Refugee Status for 5 years, and then can apply for permanent settlement in the UK. He can work, study and claim benefits. If he is refused asylum, he can pursue the appeals process through the Tribunal system until he either succeeds or becomes appeal rights exhausted and liable to detention and removal.

### **Post-Illegal Migration Bill- Muhammad entered the UK on 8<sup>th</sup> March 2023**

Under Clause 4 of the Illegal Migration Bill, Muhammad's asylum claim is treated as 'inadmissible' by the Home Office because he satisfies the conditions set out in Clause 2. This means that Muhammad cannot be granted asylum or have his claimed considered. Under Clause 3(1), he can be granted temporary leave to remain until he is 18 but then this lapses and can't be renewed. Clause 29 also means that he can't be given any other type of leave to remain in the UK ever, unless it is to meet obligations under the ECHR or another international agreement. It is not known yet in what circumstances this will be possible.

Muhammad will be protected from the duty to remove set out in Clause 2 until he turns 18, which is only a few months after he arrives. Once he turns 18, the Home Office must attempt to remove him from the UK. Muhammad can still be detained by the Home Office at any point, even whilst he is under the age of 18 under Clause 11.

If Clause 15 of the Bill is extended to Scotland, then when Muhammad arrives in England (or if he arrived directly into Scotland) he can be accommodated by the Home Office until he is transferred to a local authority. This is the case even if Muhammad is housed in a hotel in the local authority area to which he is being transferred. This can

be for a long period (there is no time limit on this under Clause 15) and is likely to take the form of a hotel or a detention facility.

After a period of time, Muhammad is transferred into North Lanarkshire Council care where he is looked after under section 25. After a few months, when Muhammad turns 18 years old, under Clause 16, the Home Office will terminate his placement and transfer Muhammad back to Home Office accommodation, so that he can be served with a removal notice to Rwanda. The Home Office only need to give 5 working days' notice to North Lanarkshire to implement the transfer.

Muhammad's social worker and his guardian have significant concerns about his mental health and risk of suicide. They believe that it is in his best interests to remain in care in North Lanarkshire. If North Lanarkshire fails or refuses to implement the transfer, the Home Office can issue an order for them to do so and take steps to enforce it through contempt of court proceedings and a fine under Clause 18. In the face of this, North Lanarkshire decide that they have no option but to transfer Muhammad back to the Home Office, regardless of their views on his welfare.

If the Home Office did not take immediate steps to remove Muhammad after he turns 18, Muhammad will still be stuck in a limbo where the Home Office might decide to terminate his placement and place him in Home Office accommodation or detention with very little notice. He cannot obtain asylum or other leave to remain in the UK, so he cannot work or claim benefits. North Lanarkshire require to support him under section 29 of the 1995 Act. As time goes on, there is a heightened risk that Muhammad goes missing by engaging with the shadow economy or is subjected to exploitation.

\* These case studies have been anonymised or generalised in order to protect the identity of the individuals involved.

### **Want to Learn More?**

For further information about these case studies or our #RefugeeBanBill campaign to oppose the Illegal Migration Bill, please contact JustRight Scotland at: [press@justrightscotland.org.uk](mailto:press@justrightscotland.org.uk)