

# The National Referral Mechanism: A Five-Year Review

A report by the Anti-Trafficking Monitoring Group for the Joint  
Committee on the Modern Slavery Bill

February 2014

**The Anti Trafficking  
Monitoring Group**

## Acknowledgments

The Anti-Trafficking Monitoring Group (ATMG) would like to thank Christine Beddoe for compiling this report.

The ATMG would also like to thank Comic Relief and the Esmée Fairbairn Foundation for funding this project. The views expressed in this report are not intended to reflect the opinions of the funders.

## Preface

The Anti-Trafficking Monitoring Group (ATMG) monitors the UK's compliance with, and implementation of, the 2005 Council of Europe Convention on Action against Trafficking in Human Beings, as well as the EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. The nine organisations belonging to the ATMG are:

AFRUCA (Africans Unite Against Child Abuse)

Amnesty International Northern Ireland

Anti-Slavery International

Bawso

ECPAT UK

Helen Bamber Foundation

Kalayaan

POPPY Project (of Eaves Housing for Women)

TARA project (Trafficking Awareness Raising Alliance, of Community Safety Glasgow (CSG))

In addition, the ATMG works closely with the Human Trafficking Foundation.

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## EXECUTIVE SUMMARY

### A DUTY TO IDENTIFY

In July 2005 the Joint Committee on Human Rights wrote “A starting point is identification of victims. Article 10(2) of the Council of Europe Convention [on Action Against Trafficking] obliges states to ‘adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations.’ Guideline 2 of the UN Principles and Guidelines also stipulates that they are “under an obligation to ensure that such identification can and does take place.”<sup>1</sup>

The National Referral Mechanism, or the NRM, was established in 2009 as part of the UK’s implementation of the Council of Europe Convention. No national legislation was adopted to give legal effect to the Convention, but instead the UK’s international obligations under the Convention have been implemented by the adoption of procedures and policies by government ministers responsible. The NRM is based on policy. Its first aim is to identify victims of trafficking in compliance with Article 10 of the Convention which obliges states to identify trafficked persons within their territory.

The Anti-Trafficking Monitoring Group (ATMG) welcomes this opportunity to provide additional evidence to the Joint Committee on the Modern Slavery Bill specifically on the operation of the National Referral Mechanism. We have used case evidence and comments from member organisations<sup>2</sup> and include findings from previous ATMG research.<sup>3</sup> There is overwhelming evidence that the relationship between the NRM, those it seeks to protect, and other stakeholders is not on the right footing. The NRM process is at its worst discriminatory, flagrantly disregards specialist professional opinion and places victims of trafficking into situations of despair. However, there are a significant number of professionals, both government and non-government, who wish to contribute to a better, more effective and more reliable system of identification because they know that higher standards of identification and victim protection lead to stronger witnesses and better evidence to convict the perpetrators, as well as a reduced likelihood of re-trafficking. The conviction of perpetrators is fundamental to redress and is a significant aspect of rehabilitation.

Our analysis of the NRM is outlined in the sections below. However, the ATMG has four overriding and substantive recommendations for the Joint Committee to consider in its deliberations for the Modern Slavery Bill.

The Anti-Trafficking Monitoring group makes the following recommendations:

- 1. That a new statutory duty on public authorities to identify victims of trafficking is introduced into Part 3 or Part 4 of the Modern Slavery Bill in order to fully transpose into**

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<sup>1</sup> Joint Committee On Human Rights - Twenty-Sixth Report  
<http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/245/24502.htm> [accessed 07/02/14]

<sup>2</sup> ATMG members are: AFRUCA, Anti-Slavery International, Amnesty International- Northern Ireland, BAWSO, The Poppy Project, ECPAT UK, The Helen Bamber Foundation, Kalayaan, TARA project.

<sup>3</sup> The four research reports on used for the submission can be found at:  
[http://www.antislavery.org/english/what\\_we\\_do/programme\\_and\\_advocacy\\_work/trafficking/anti\\_trafficking\\_monitoring\\_group.aspx](http://www.antislavery.org/english/what_we_do/programme_and_advocacy_work/trafficking/anti_trafficking_monitoring_group.aspx)

**law Articles 10(2) of the Council Europe Convention and 11(4) of the Directive that relate to the early identification of victims in co-operation with relevant support organisations.**

**2. A statutory duty to identify would result in a concomitant duty on relevant public authorities to collect data which would then be subject to scrutiny and monitoring by Inspectorates or public bodies.<sup>4</sup> This would enhance reporting by the proposed Anti-Slavery Commissioner, as the information would be in a form that could be shared more readily. The introduction of a new duty to identify victims of trafficking would remove the need to have Part 4 (clause 35) of the Bill. So this proposal has a neutral effect on the Bill itself but has wide-reaching positive impact.**

**3. The existing principle of informed consent regarding the referral of adult victims of trafficking into the NRM should be retained.**

**4. The NRM process is recalibrated so that it truly acts as a gateway to care and support and becomes a process operating as a specialist multi-agency panel for decision-making, which includes a formal right to appeal negative Conclusive Grounds decisions. To that effect we recommend that the Home Office UK Visas and Immigration is removed from its role as Competent Authority in the current NRM.**

We have particular concerns with the impact of the NRM on children and those responsible for safeguarding children and we strongly recommend that independent child protection-trained social workers are included in the multi-agency NRM team who also have powers to advise local authorities and other professionals.

We urge the Joint Committee to request the Home Secretary to publish full details of the NRM review process that she announced in October 2013.

We congratulate the Government for ensuring the Modern Slavery Bill extends wider than human trafficking but it does raise an important point that the NRM should be consistent with the new changes brought about by the Bill and we would encourage the Committee to recommend to the Home Secretary that the scope of the NRM is widened to incorporate all forms of Modern Slavery.

The Anti-Trafficking Monitoring Group have identified five areas which demonstrate that the interaction between the NRM and victims, support agencies and government is not only incorrect, but if not urgently adjusted could see a collapse in the system for identification because of a loss of trust. We would like the Joint Committee to consider the following areas of concern in relation to the National Referral Mechanism operation

- 1. Failure to identify, inconsistency in decision-making and discrimination in decision-making;**
- 2. Reliability of data;**
- 3. Child safeguarding.**

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<sup>4</sup> Recognising the importance of potential victims feeling safe to come forward for advice and support, such a duty should not be conferred on First Responders who are not government funded.

## PART 1 - THE NATIONAL REFERRAL MECHANISM (NRM)

### *Is the interaction of the NRM with victims, NGOs and Government agencies the right one?*

In terms of identification, Article 10 of the European Convention on Trafficking provides in detail:

1. Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.
2. Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2.
3. When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age.
4. As soon as an unaccompanied child is identified as a victim, each Party shall:
  - a) provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child;
  - b) take the necessary steps to establish his/her identity and nationality;
  - c) make every effort to locate his/her family when this is in the best interests of the child.

### **The gateway to protection, care and support as a victim of trafficking is identification as a victim.**

The European Directive on Preventing and Combatting Trafficking in Human Beings and Protecting its Victims was intended to be transposed into law on 6th April 2013 ("the Directive"). The Directive mirrors the obligations for identification and protection of victims in the Council of Europe Convention. The Directive is enforceable under UK law.

The term National Referral Mechanism was originally devised by the OSCE<sup>5</sup> and has been adopted as an internationally accepted framework to identify and provide support to victims of trafficking. According to the OSCE, the basic aims of an NRM are to ensure that the human rights of trafficked persons are respected. The word 'referral' is intended to mean the referral of identified victims to specialist therapeutic and support services through the use of a co-ordination mechanism – the NRM. In other words, the victims are first identified, then their details passed to the NRM for

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<sup>5</sup> Organisation for Security and Co-operation in Europe

recording so that they get access to specialist services in accordance with international human rights obligations.

In the way the UK has adapted the NRM, the identification process consists of two stages: (1) referral to the NRM of a potential trafficking victim by a listed 'First Responder' and (2) determination of trafficking victim status by one of two 'Competent Authorities' (CA); the Home Office division responsible for visas and immigration (previously UK Border Agency) and a multi-agency authority based in the UK Human Trafficking Centre (UKHTC). It is implicit that for a referral to get to a Competent Authority, the First Responder would have had to have had a level of certainty or disclosure from the victim, or intelligence where they were found in order to complete the referral form.

The word 'referral' in the framework of our UK National Referral Mechanism has taken on an entirely different emphasis with many professionals, including the Home Office, often assuming it simply means to 'refer' cases to the two Competent Authorities to control the identification process and ultimately determine who gets access to support services. This flawed interpretation of the word 'referral' has led to a skewed approach to identification with an inappropriately high concentration of control in the hands of the two Competent Authorities, the UKVI and the UKHTC by merging identification and decision-making in their hands.

Again, the way the UK has interpreted the Council of Europe Convention in trafficking policy has been very narrow about who it chooses to be a Competent Authority. We believe that the phrase 'competent authorities' in Article 10, as in a number of other conventions, to be a synonym for the State and so it is used in other UK legal instruments in a range of different legal fields. Thus a health service or a police service could and should be a competent authority as well.

When discussing the functioning and accountability of the NRM, it is important to recognise that the NRM itself is not a "thing", or a single entity. Rather it is a framework or set of actions, based on non-statutory guidance, that are open to interpretation. We acknowledge that the Home Secretary has recently announced there will be a review of the NRM but details of this have not yet been published.

The NRM became operational in 2009 and there is almost five years of decision-making data available to analyse. The ATMG has analysed a number of them. Over this time victim support organisations and legal representatives have become increasingly concerned about structural and operational flaws in the NRM framework. In some cases the NRM does work well, but rather than exist to support the identification of all victims and provide a gateway to care and support, the objective data now points to a system that routinely fails to deliver a consistent victim-centred, human-rights based approach to identification.

In determining trafficking status the Home Office guidance for Competent Authorities asks decision makers to match the facts of the case to the three constituent elements of trafficking– the act, means and purpose. After it has been determined that the facts fit, the guidance directs the decision maker to assess both external credibility e.g. that trafficking occurs in the home country in the manner described, with regard for instance to published and recognised reports; and internal credibility i.e. the set of facts portrayed by the presumed trafficked person are credible. It has to be considered "whether the material factual claim is coherent and consistent with any past written or



verbal statements, and consistent with claims made by witnesses and with any documentary evidence submitted in support of the claim. It is for the decision maker to assess how well the evidence submitted fits together and whether or not it contradicts itself.” In this respect the trafficking guidance closely mirrors Home Office guidance for asylum applications and pays considerable attention to the potential trafficked person’s credibility.

Case evidence shows that the NRM is open to discriminatory decision-making and the alienation of first responders by ignoring their expertise and that the absence of an appeal process leaves many victims having to challenge the trafficking status decision through judicial review, or if they have made an application for asylum, the asylum and immigration tribunal, which is not only time-consuming and costly, but can cause severe stress and additional trauma.

The advantages of a well-functioning NRM are clear, as one service provider noted:

*‘When it works, and it works well and properly it makes a big difference to the individual women in terms of “I have a formal bit of paper, the Home Office believe me” and that is significant for that individual.’*

### **(1. A) FAILURE TO IDENTIFY**

The number of official First Responder agencies has increased since 2009 but not all statutory or relevant voluntary sector agencies are recognised NRM First Responders. Legal representatives or medical professionals, nor staff working in the prison estate, can directly refer their clients into the NRM gateway. It is the Home Office that approves who is or isn’t a First Responder, but the Home Office acknowledges that there are no written criteria for first responders to the NRM<sup>6</sup>. There is a significant difference between whether a designated First Responder such as a Local authority or the Home Office has a more general authority to refer and in fact whether the systems are set up to make routine assessments, actually do the referral and log the outcomes. For example the Home Office Criminal Casework Prisons, Operations and Removals Team (PORT) do not hold local records on child referrals made to the National Referral Mechanism.<sup>7</sup>

The majority<sup>8</sup> of adult victim-support organisations recognised as First Responders are also recipients of funds under the government contract for victim support. Victim-care and support organisations outside the official list have to navigate their way through the system without having an official status as First Responder. This is not ideal for either the organisation or the victim and can result in delays or simply no referral at all.

Victim-support organisations continue to report cases to the ATMG where the Home Office ‘s own First Responders as asylum screening units fail to spot trafficking indicators during asylum screening interviews, often the first interaction with authorities. Furthermore, the asylum screening interview questionnaire has no questions specifically designed to elicit information about potential trafficking. The interviewer is instructed not to consider 'substantive elements' of the asylum claim and are unable to consider prime indicators such as 'abuse of a position of vulnerability'. These excerpts

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<sup>6</sup> HC Deb, 23 January 2014, c282W

<sup>7</sup> HC Deb, 9 January 2014, c317W

<sup>8</sup> Those First Responders who are not government funded include Kalayaan and the Poppy Project.

from asylum interviews provide examples of trafficking scenarios which were not acted upon by Home Office staff:

“He told me I had to work on the streets. I worked ... he threatened me [with] what would happen to me if I ever left. I told [him] that I didn’t want to do this. That it was against my will.”

“The passport was arranged by a mafia group ... They forced me to work and they want money”

“They [the employer] are cruel. Very cruel. They don’t give me stuff. They don’t give me enough food. I was beaten and I have an injury. I’m not allowed to leave the house.”

“I have been working as a sex worker since I arrived in the UK four years ago. I did not pay any rent to the lady so she said I will have to sleep with these men.”

### **(1.B) DETAINED FAST TRACK**

Where trafficking is not identified or where it is but the victim does not consent to enter the NRM or does consent but a reasonable grounds decision is made but not maintained, victims claiming asylum may be placed in ‘Detained Fast Track’ (DFT). This occurs when the Home Office believe that a decision on asylum can be made quickly. Some service providers felt that there were increasing numbers of victims being placed in DFT, which is recognised in Home Office guidance as unsuitable for trafficking victims. There is concern that trafficking indicators were being side-lined in favour of ‘greater efficiency’ in the detention and quick removal of irregular migrants.

The ATMG’s report ‘In the Dock’<sup>9</sup>, published in June 2013, found many examples of First Responders failing to identify trafficked persons. Trafficked people who were not part of a ‘rescue’ operation might come into contact with authorities when they were arrested for immigration offences. Enforcement action relies on those who are trafficked to disclose their status quickly or face detention. Those who did not report that they were trafficked at the point of arrest or detention would find they were not subsequently identified as trafficking victims with late disclosure being taken as a credibility issue rather than an aspect of many trafficking victims’ trauma.

The full list of First Responders is attached as Appendix 1. This narrow approach to (a) who can refer; and (b) who can make decisions about identification has a number of unintended consequences. The most serious is that other statutory agencies while handling data about vulnerable individuals do not take responsibility for the identification and protection of individuals who may be victims of trafficking. This is most acutely seen in the criminal justice system when prosecutors, prison and probation staff, and the Home Office criminal casework directorate, amongst others, fail to take the steps necessary to proactively identify a victim of trafficking when reviewing case information, even though they may be required to act if information is passed to them from another source.

### **(1.C) INCONSISTENCY OF DECISION-MAKING**

The Anti-Trafficking Monitoring Group has previously reported on the inconsistency of decision-making across the two NRM Competent Authorities (CA). Whether taken on an annual, or quarterly basis the analysis of data on positive decisions shows that the UK Human Trafficking Centre has a

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<sup>9</sup> [http://www.antislavery.org/includes/documents/cm\\_docs/2013/i/in\\_the\\_dock\\_final.pdf](http://www.antislavery.org/includes/documents/cm_docs/2013/i/in_the_dock_final.pdf)

significant higher rate of positive decision-making than the Home Office UKVI (formerly UKBA). The table below shows data published by the ATMG in 2013.

**Table 1. Rates of Positive Conclusive Grounds Decisions**

NRM Competent Authority	Period		Total Referrals' Processed	Percentage of NRM referrals' granted Positive Conclusive Decision
UK Human Trafficking Centre	2012		299	80%
Home Office	2012		875	< 20%
UK Human Trafficking Centre	Oct-Dec 2011		65	80%
Home Office	Oct – Dec 2011		184	19%

These dramatic differences in rates of positive and negative decisions by the different competent authorities are worrying. Some reports have pointed to the different way in which victims have been referred to the NRM which influences the outcome of the decision. The majority of EU national referrals are made by police who recover victims of trafficking in the course of their operations. The UKHTC CA is then provided with strong objective evidence from the police about the trafficking scenario from which the victim has been rescued, aiding it in making positive decisions. The NRM referral form relies heavily on indicators regarding the situation in which a victim is recovered and seems weighted in favour of victims that are initially identified in an exploitative environment. Government-funded victim support services also make reference to taking the person to safe accommodation 'from their place of rescue', linking access to support with this scenario.

On the other hand, non-EU/EEA trafficked persons are more likely to be referred to the Home Office CA following an individual's claim of trafficking in the context of a local authority assessment, asylum claim or other immigration process. In such cases there is often a lack of supporting information and/or the claimed exploitation has taken place a number of years before (*See 'historic cases' below*).

There are additional factors that contribute to the differences in decision-making. Some of these are presented in more detail below. Of particular note is the little weight given to the person's individual circumstances, for example, trauma (mental, psychological, or emotional), inability to express themselves clearly, mistrust of authorities, feelings of shame or painful memories (particularly those of a sexual nature) by the Home Office CA in establishing the credibility of a trafficked persons account.

## **(1.D) DISCRIMINATION IN DECISION-MAKING**

### ***'A culture of disbelief'***

**Table 2. Comparison of Positive NRM CG decisions for Nigerian and UK children**

Children	Total number of NRM Referrals From 2009 –	Positive Conclusive Grounds	Awaiting RG or CG decision
Nigeria <sup>10</sup>	160 To 27 March 2013	44 (27.5%)	57
UK <sup>11</sup>	96 To 19 June 2013	77 (80%)	-

**Table 3. Total Number of Nigerian children referred to NRM from 2009 - 2012<sup>12</sup>**

	2009*	2010	2011	2012	Total
Nigerian	12	29	25	67	133
* Data provided from April to December 2009.					

Members of the Anti-Trafficking Monitoring Group have considerable experience in reviewing NRM Competent Authority decisions, both positive and negative. Some ATMG members are First Responders and are responsible for making the initial referrals and supporting victims through the entire process. The ATMG is extremely concerned about a widespread culture of disbelief in the Home Office decision-making process and how it impacts on the successful identification and support of victims. We recognise that some aspects of this can be addressed through a process of continual training, but there is an underlying issue that points to systemic discrimination and we think is driven by a particular approach to assessing credibility. The tables above show the variance when comparing Nigerian children and UK national children. In addition to the low number of Conclusive Grounds decision by comparison to UK children there are also an unacceptably high number of cases where there have been no decisions creating a backlog similar to that seen in the asylum system. At its most acute the conflation of human trafficking and immigration policy blurs boundaries of decision-making that lead to unsafe decisions. Although policy guidance to officials on the identification process outlines trafficking indicators and cautions officials on the need for probity when assessing issues of credibility; the reality is somewhat different.

In 2010 the ATMG found that the disproportionate focus on credibility in determining trafficking status by the Home Office CA was wrong. In ATMG research in 2012 and 2013 this was the same. The majority of service providers reported that the Home Office CA systematically makes findings on credibility to justify negative decisions. The reasoning often used to dismiss the credibility of an asylum claim, is repeated in trafficking decisions. Also many of the inconsistencies in the victim's account identified by the case owner refer to the victim's life before and after the trafficking

<sup>10</sup> HL Deb ref C387W

<sup>11</sup> HL Deb, 27 June 2013, c162W

<sup>12</sup> HoL Deb C384W

situation, rather during the experience of trafficking. The inconsistencies include small inaccuracies such as discrepancies between dates and times of events.

*“You were unable to give dates and times relating to your journey to the United Kingdom, including the time you transited through [xxx], the date you left [xxx] and the date you arrived in the UK. Furthermore, despite claiming to be unaware of months and dates, you consistently claimed your birth date was [xxx].”* (NRM decision letter excerpt)

In another case a trafficked person was trafficked to different countries and handled different currencies but confused the currencies and the different amounts in their account, which was used to discount her credibility. In another case the facts were distorted considerably:

*“It is noted that you did not mention in your Screening Interview that you had been forced to work as a prostitute in the UK, you only stated that your aunt had had used you as a prostitute and you ran away”.* (NRM decision letter excerpt)

A common credibility issue is that of fraudulent travel documents and passports. While some trafficked persons maintained that they had had their photograph taken but had not been involved in the visa application process and received a passport with their picture but not their name or date of birth, case workers have maintained that Entry Clearance Officers “undertake stringent tests to ensure the authenticity of such documents”. This reflects a disappointing naivety on the part of case owners where corruption among officials in passport offices in other countries can be common and is well known.

A common theme leading to discredited accounts relates to stories of escape by testing the plausibility of the actions of third parties:

*“[Y]our account of escaping when your employer left the doors unlocked but actually open is considered inconsistent with your account of their previous behaviour where they kept the doors locked, wholly restricted your freedom and controlled your actions.”* (NRM decision letter excerpt)

The absence of corroborating information from the police is also sometimes used to dismiss a trafficking claim:

*“Despite your continued co-operation with [the police] since April 2012 they have been unable to obtain any information that would corroborate your claim to have been mistreated ... In the absence of any corroborating evidence, it is not accepted conclusively that you were trafficked from [X] to the UK or that you were trafficked internally within the UK in 2009.”* (NRM decision letter excerpt)

For a Home Office case worker to dismiss a trafficking claim on the basis that the police have not adduced corroborating evidence is patently unfair. Although objective evidence from the police must always be given due weight, the CA guidance states it “should also be given to the reports and views of local authority children’s services or the organisation supporting an individual who may have spent most time with the potential victim and established a degree of trust”. To deny claims based on a lack of corroborating police evidence sets a dangerous precedent for fair NRM decisions.

In 2011-2012 challenges about the credibility of victims referred to the NRM from the Poppy Project accounted for just over 54% of cases which were issued with a negative decision (most of which were overturned following advocacy from the project). The culture of disbelief is most evident in

some of the most common reasons given by UKVI when issuing a negative reasonable or conclusive ground decision. The examples below are taken from Home Office [Competent Authority] negative NRM decision letters:

*“The Competent Authority does not accept that, having worked for the family since 1993; you would be willing to relocate to an entirely different continent, leaving your six-year old son behind in the care of the family who you claim exploited you, without clarifying what the exact terms and conditions of your employment would be...”*

The victim in question had been trafficked for the purposes of domestic servitude. She was given a negative decision. Following advocacy from the Poppy Project this was withdrawn. An employment tribunal later awarded her damages in the sum of £54,000 from her former employers.

### **Case Study 1**

‘YP’ was brought to the UK at the age of 16 to with the promise of going to school. On getting to the UK she was not allowed to go to school as previously agreed. She was made to do a lot of housework looking after the family, cooking and cleaning and looking after the children. She suffered physical and emotional abuse at the hands of her traffickers. Her case was brought to the attention of the Local Authority children’s services by a boiler engineer who came for repairs and became concerned to see the young person without schooling and doing so much work in the house. The Local authority went to visit the family home and on the day ‘YP’ was told to go to the library while they were being seen by social workers. After this incident, she was threatened and instructed not to speak to anyone about her situation and was forbidden from talking to strangers. However, after this event they registered her for an English language class, but she was still forced to carry out all her work for them unpaid. Years later she was allowed to attend church but her movement was strictly curtailed. If she returned home late, she would be punished for this.

She made an attempt to escape in the months after the Local Authority visit, but was found by her uncle - her trafficker, who took her back to his home. After a couple of years she eventually ran away from the house and found shelter and protection with members of her church before being referred to AFRUCA.

‘YP’ was referred to the Salvation Army as a First Responder, who referred her into the NRM. However ‘YP’ received a negative Reasonable Grounds decision. It was argued that whilst there were indicators that ‘YP’ was brought to the UK as a minor by deception, her conditions did not meet extreme conditions required for domestic servitude to amount to exploitation even if she was trafficked into the UK. Conversely, the judge in her asylum case accepted her to be a genuine victim of trafficking and exploitation for domestic servitude. The failure of the NRM to properly identify ‘YP’ has led to her being denied access to entitlement, assistance and justice.

## **(1.E) PROFESSIONAL DISREGARD**

There is a fundamental fracture in an identification system where the NRM Competent Authority as final decision-maker routinely refuses to accept the opinion or expertise of specialist victim support agencies and First Responders. Yet this is happening on a regular basis. This relationship should be one of mutual co-operation. Indeed it is made explicit in Article 10 of the Council of Europe Convention. However ATMG’s research with First Responders highlights the adversarial way in

which the staff of Home Office CA are expected to make decisions about victims of trafficking that often places them in direct opposition to the professional opinion of First Responders and specialist victim support organisations who work with victims of trafficking every day. When this happens over and over the level of trust in the system diminishes.

First Responders act as a filter and put the case together to send to the Competent Authority - so that when a negative NRM decision is made, not only is the Competent Authority making a decision about an individual person's credibility as a victim but they are also making a judgement about the ability of the First Responder and their competence to identify victims. To make these judgements without even conferring with the First Responder is even more incredulous, yet it happens frequently. Case analysis shows that greater weight is given to the opinion of police officers than that of specialist victim support services. Below are two examples where the Competent Authority quite openly disregarded the professional opinion of two specialist First Responders; The Poppy Project and Kalayaan.

An average of 80 % of Poppy service users are granted positive Reasonable Grounds decisions through the NRM after strong, expensive and time-consuming advocacy. 86% of Poppy service users are granted positive Conclusive Grounds decisions, which is 18% higher than the national average. This reflects the expertise of Poppy in identifying genuine cases, analysing and presenting information to the CA and being able to advocate. Despite this, the Home Office Competent Authority still continues to reject objective evidence from the Poppy Project and other highly trained specialist organisations.

#### **Case Study 2**

X was arrested for immigration offences after calling the police when she was violently attacked by her partner. She was arrested and put in detention, where she disclosed that she had been trafficked to staff. Detention staff referred her to Poppy to assess and act as First Responder. Poppy referred into the NRM and she was given a positive Reasonable Grounds decision. She was released into the care of the Salvation Army and received support from the sub-contractor, a trauma specialist, and the Poppy Project. During this time X was diagnosed as HIV positive. No information was sought by the Competent Authority before issuing a negative Conclusive Grounds decision. The authority included in their reasoning, that because she had only recently commenced trauma counselling, there was not sufficient evidence of her on-going support needs.

In Case Study 3 the NRM decision seems to have been unduly influenced by the police's conclusion that there was no case for domestic servitude, but no consideration that the criminal case would have been established beyond reasonable doubt rather than on a balance of probabilities for a Conclusive Grounds decision. The Competent Authority completely discounted Kalayaan's professional opinion as an expert in the field and showed disregard for Kalayaan's status as a First Responder.

#### **Case Study 3**

You state that you were treated badly by the family you worked for, made to work long hours for little pay and had your passport withheld. You claim that you were subject to domestic servitude by your employer and your case was reported to the Metropolitan police. Following their investigation

the police concluded that there were no charges for your employer to answer and concluded that based on the evidence that you were not subject to domestic servitude by your employer. It is noted that you submitted a report from Kalayaan in support of your claim to have been a victim of trafficking, however, it is considered that this report was based solely on the account you provided. The Police findings were made after investigating both sides of the story and no such weight is placed on the Kalayaan report. As a consequence of the police investigation it was decided there was no requirement for UKVI to further interview you regarding your claim, it is therefore concluded that whilst your claim is internally consistent it is not corroborated externally and as such it is not accepted that you were transported for the purpose of exploitation.

## **PART 2. RELIABILITY OF DATA**

### ***Are there limitations of the data from the NRM as it stands?***

There are quite significant limitations on both the quantity and quality of NRM data. The ATMG acknowledges a significant improvement in the way that data is being published by the UK Human Trafficking Centre and this has helped the ATMG to analyse trends and understand inconsistencies. Not all persons are referred to the NRM and there are different reasons for that. With the overriding concern that it will negatively impact on their personal situation, many victims simply refuse to consent to being referred to the NRM. In 2013 Kalayaan internally identified 90 new people as trafficked during the year, but of these only 16 consented to be referred into the NRM.

However, even with the limited NRM data that is available, the challenge is how to take inferences from it when decision-making is inconsistent and where referrals are being refused, but support agencies and others, still believe the person to be a victim of trafficking and judges make findings of fact (which bind UKVI) to that effect. There are three main data sets that come from the NRM – the number of referrals to the NRM; the number of positive Reasonable Grounds decisions; and the number of positive Conclusive Grounds decisions. When asked about the numbers of victims of trafficking, Government Ministers will use the number of referrals, not the number of Conclusive Grounds decisions, in their written answers to parliamentary questions. This is as confusing as it is misleading and does not reflect the number of people getting access to Government support. We can only conclude that the government is at one level happy to accept that being referred into the NRM is sufficient proof to be counted as a victim of trafficking even if its own Competent Authorities refuse the person official victim status. For example:

#### **HC Deb, 4 November 2013, c33W**

Rehman Chishti: To ask the Secretary of State for the Home Department what estimate she has made of the number of children trafficked (a) into and (b) out of the UK annually.

James Brokenshire: The Inter Departmental Ministerial Group on Human Trafficking Annual Report provides data on the number of potential victims of trafficking, including a breakdown of child referrals. In 2012 there were 371 children referred to national referral mechanism (NRM). This figure includes victims who are trafficked within the UK. There is limited knowledge on the number of children trafficked out of the UK.

#### **HC Deb, 26 November 2013, c177W**



Mr Syms: To ask the Secretary of State for the Home Department what estimates she has made of the number of victims of modern day slavery in (a) Dorset, (b) the South West and (c) the UK in each of the last three years.

James Brokenshire: The National Referral Mechanism (NRM) is a framework for identifying potential victims of human trafficking and ensuring they receive the appropriate protection and support. 946 cases were referred in 2011 and 1,186 in 2012, of which 28 and 32 respectively were from the south-west. Data are not available for Dorset specifically, nor for the south-west prior to 2011.

## **(2. A) QUALITY OF DECISION-MAKING**

Prior to its 2013 report *'Hidden in Plain Sight'*<sup>13</sup>, the Anti-Trafficking Monitoring Group reviewed forty negative NRM decision letters and found 36 which had cause for concern including the Competent Authority's misunderstanding of the trafficking definition; misunderstanding of the effects of trafficking on the victim; focusing on small inconsistencies as grounds to question the credibility of the whole account; rejecting claims on the basis of a lack of corroborative police evidence to support the claim, and rejecting claims on the basis of trafficking being historic and the individual no longer needing the protection of the Convention.

In one case the exploiter had not recruited or transported the potential victim, being aspects of the 'act' of trafficking. Without reflecting on what was meant by 'receiving' a victim under the definition, the CA wrote:

*"You entered the employment through an agency which led you to working in [the UK] for this family. You travelled by your own volition to take up the employment. Your recruitment was arranged by an independent agency as opposed to the family. Therefore you do not meet part 'a' [the act] of the definition." (NRM decision letter excerpt)*

In another case the potential victim was aware that she would work in prostitution but the terms agreed to were very different in practice. Coercive means were used to ensure her compliance with the disagreeable terms. The facts indicated that she had no say over the number of clients she received, was subject to debt bondage and threatened with harm to her family if she did not reimburse her debts. The CA found that since she had agreed to work in prostitution, she had not been subject to 'deception', one of the listed 'means' of trafficking and disregarded the fact that she was in fact being coerced.

Another failure on the part of the CA to identify coercive means was evident in a case of domestic servitude. The potential victim claimed that she worked excessively long hours with little food, was not paid, had her passport retained and was subject to sexual and physical assault by the employer. The CA wrote:

*"Your evidence is that you were fully aware of what was required of you, your salary was agreed and included board and lodging. Therefore it is concluded that your actions were, at all times, of your own volition and not a result of the factors identified in the means element of the definition in trafficking in human beings" (NRM decision letter excerpt)*

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<sup>13</sup> [http://www.antislavery.org/includes/documents/cm\\_docs/2013/h/hidden\\_in\\_plain\\_sight.pdf](http://www.antislavery.org/includes/documents/cm_docs/2013/h/hidden_in_plain_sight.pdf)

## (2. B) TRAINING

The ATMG is concerned about the lack of transparency that surrounds the quality and quantity of competency-based training that is given to Home Office staff responsible for making NRM decisions and relevant line managers.

We note the following answers to written parliamentary questions and the reluctance to make available the Home Office training materials for scrutiny by parliament.

### 3 Feb 2014: Column 27W

**Paul Blomfield MP:** To ask the Secretary of State for the Home Department pursuant to the answer of 6 January 2014, Official Report, column 27W [*see below*] on human trafficking, if she will place in the Library a copy of (a) the Foundation Training Programme and (b) the Competent Authority Training. [182747]

**Mr Harper (The Minister for Immigration):** There are no plans to place copies of these courses in the Library.

### 6 Jan 2014: Column 27W

**Paul Blomfield MP:** To ask the Secretary of State for the Home Department what specialist training is offered to asylum case owners with respect to (a) identification of cases of trafficking and (b) working with victims of trauma. [181075]

**Mr Harper (The Minister for Immigration):** All asylum decision makers undertake a 25 day initial training course. This includes training on interviewing vulnerable persons, gender issues and an introduction to the issue of victims of human trafficking, including the National Referral Mechanism (NRM), indicators of human trafficking, and the First Responder referral process.

Further, all asylum decision makers are required to complete two mandatory e-learning courses, entitled "Human trafficking" and "the National Referral Mechanism". Content includes indicators of human trafficking and how to identify potential victims and refer them into the National Referral Mechanism.

In addition, all asylum case owners and caseworkers who operate as Competent Authority decision makers within the NRM are required to undertake additional training on NRM processes, indicators, sensitive interview skills, children as victims of trafficking, NRM decision-making, group discussion and NRM partner presentations.

There is no standalone training on trauma issues but the issue of trauma is included in a number of training courses, including the Foundation Training Programme and Competent Authority training as above.

## (2.C) SO-CALLED 'MITIGATING CIRCUMSTANCES'

Recognising that trafficking can have traumatic effects on victims, the Home Office guidance for Competent Authorities refers to mitigating circumstances that need to be taken into account by the decision maker in assessing credibility. Reference is made to mental, psychological, or emotional trauma, inability to articulate, mistrust of authorities, feelings of shame, painful memories

particularly those of a sexual nature which affect the disclosure of experiences. The guidance advises that “as a result of trauma, victims in some cases might not be able to recall concrete dates and facts and in some cases their initial account might contradict their later statement.” It also states that late disclosure should not be seen as necessarily manipulative or untrue, but in many cases is the result of an effective recovery period and the establishment of trust with the person to whom they are disclosing. Nonetheless, the guidance is qualified by; “the need to be sensitive does not remove the need to assess all information critically and objectively. This includes considering the credibility of a case.” This leaves the decision maker in a difficult situation, having to balance such factors against inconsistent or incomplete accounts which diminish the person’s credibility.

ATMG research has illustrated that while many of the negative NRM letters by the Home Office CA’s acknowledge the existence of such factors in practice, they are given little weight. Failure to recognise and consider such factors is a failure to apply a victim-centred approach to the identification of victims of trafficking. Indeed, ATMG would argue that, rather than being factors in mitigation to explain otherwise poor credibility and minor inconsistencies, such factors are fundamental to victimhood and are often key indicators in establishing that a person is, in fact, a victim. ATMG believes that making these factors an aspect of the consideration of credibility also positions expert reports in the category of 'pleas in mitigation' rather than substantive corroborative evidence of the events described. Furthermore, expert medico-legal reports can often shed light on issues such as the pre-existing conditions (such as childhood trauma - potentially leading to a diagnosis of Complex PTSD) which make the victims vulnerable to abuse. ATMG notes that 'abuse of a position of vulnerability', a well-established concept in the identification of trafficking victims is not referred to in the guidance to Competent Authorities.

## **(2. D) THE NRM REFERRAL FORM**

When a trafficked person is referred to a Competent Authority the First Responder must complete a standard referral form. The information provided in the referral form provides the basis for decisions by the CA but the quality of information provided can vary dramatically.

In previous ATMG research, interviewees said that First Responders sometimes give very little detail in NRM referrals, occasionally writing only two lines as to the particulars of the case. This in turn makes it difficult for the Home Office CA to make positive decisions, even when the First Responder is part of the same agency. The official guidance for CAs states that “where there is insufficient evidence to support a claim ... (for example where the case is lacking key details without valid reason), the Competent Authority is entitled to question whether the Reasonable Grounds threshold is met.” This scenario highlights the grey area of where the responsibility sits for establishing sufficient evidence to reach an identification threshold. Is it the Competent Authority or is it the First Responder?

## **(2. E) EFFECT OF TRAFFICKING ON VICTIMS**

Sometimes case workers speculate in the rejection letters as to what a “genuine” trafficked person would have done in the same circumstances, without showing understanding of the impact of trafficking on victims, described in their own guidance. Also, so called mitigating circumstances, again detailed in their own guidance, are frequently disregarded. In one rejection letter the CA seemingly had overlooked Home Office guidance on late disclosure of traumatic events:

*“Whilst at this employment you were also subject to sexual abuse by [X]. However, it is noted that you failed to mention any allegation of sexual abuse during your lengthy substantive [asylum] interview”. (NRM decision letter excerpt)*

An inability to recall certain details is also cited as sufficient reason for disbelieving a potential victim’s account, again in conflict with the CA guidance on mitigating circumstances:

*“[D]espite claiming that it was the first time you had ever travelled by plane, you were unable to describe any particular aspect of either the plane itself or the staff within, apart from the fact they spoke English. This is particularly significant because, if as you claim, it was your first time you had ever boarded an aeroplane then it is expected that you could recount, at the very least a basic description of the plane itself”. (NRM decision letter excerpt)*

In some rejection letters case workers focus on the unusual behaviour of third parties to discredit the credibility of the victim’s account. In one case of sexual exploitation the victim had asked an acquaintance of the exploiter to help her. The case worker wrote:

*“[I]t is unclear why this man drove you from [xxx] to [xxx] in order to procure assistance, a distance of over [xxx] miles, as opposed to accessing the multitude of organisations able to offer assistance at any point in-between. You were unable to explain this”. (NRM decision letter excerpt)*

## **(2. F) CONFLATION OF NRM AND ASYLUM PROCEDURES**

Some victims of trafficking seek asylum in the UK. The question of whether someone is a victim of crime and entitled to assistance under the NRM should be distinct from whether or not that person has a valid claim for asylum and/or international protection. But it appears that the Home Office CA is treating these two issues as part of one process and postpones the NRM decisions until after the asylum decision. The asylum decision is often made irrespective of the 45 day reflection period. As a result, trafficking victims are not benefiting from the reflection period and assistance they are entitled to. One service provider, in following up a Conclusive Grounds decision during the reflection period was informed by the case worker with respect to the reflection period:

*“... the 45 days is only really a guide anyway. They’ve [the trafficked person] claimed asylum, we’ll make the decision with the asylum claim, we’ll make the two together, we’re not doing the 45 days.”*

In practice the asylum claim interviews are taking place at a time when the trafficked person’s instability and needs are most acute. This is, in part, due to the strict deadlines for asylum interviews following submission of a claim, but sometimes interviews are taking place very shortly after referral to the NRM.

On the question of asylum, the case worker has to decide whether the person has a well-founded fear of persecution. The standards of proof in connection with these distinct questions differ. The standard for trafficking cases is twofold with the Reasonable Grounds decision based on a test of “I suspect but cannot prove” that the person is a victim of trafficking, followed by the Conclusive Grounds decision based on a “balance of probabilities”. In asylum cases the standard is “a reasonable degree of likelihood” that the applicant will be subject to future harm. Also the party responsible for adducing facts in support of claims, or the ‘burden of proof’ differs in the two cases. In the case of trafficking claims the burden of proof lies with the government which has a positive obligation under Article 4 to instigate an investigation by the police, whereas in asylum claims

evidence must be adduced by the applicant. The thresholds in asylum claims are set relatively high: a threat to life or liberty or a serious risk of torture or ill-treatment when compared to the Trafficking Convention which requires consideration of the victim's "personal situation" which by contrast, is a low threshold. Furthermore, the question of return is quite different in asylum and trafficking cases. In an asylum claim a willingness to return might be viewed as acceptance of the protection of the authorities in the country of origin which can go to the fundamental question of whether or not the applicant is a refugee. However, the question of return is far more complex in trafficking cases, and the individual's 'safety and dignity' are key factors in determining their personal situation and questions of the adequacy of State protection may or may not be relevant. It is axiomatic that a victim of trafficking should be capable of being determined as such at the Conclusive Decision stage and be able to discuss their return whereas an asylum seeker who expresses a willingness to accept the protection of his own state is not a refugee. It is unlikely that these important distinctions are being taken into account if the NRM and asylum decisions are being rolled into one procedure. The result can only be poor quality NRM decisions and injustice for trafficking victims.

In 2014, there is still no formal mechanism in place to appeal NRM decisions. The only option is by judicial review which is not easily accessible and relies on legal representation. Otherwise it may be possible to informally request reconsideration of a decision.

## **(2. G) REQUESTS TO RECONSIDER NRM DECISIONS**

The ATMG has argued that there should be a formal right to appeal negative decisions. If such a right were put in place it would then make informal requests to reconsider obsolete.

However, currently, in the absence of a formal appeal process the system does rely on informal requests to reconsider decisions that can only come from a First Responder or support provider who is directly involved in the case. There is no set format or guidance for requesting reconsideration of a decision. The Home Office guidance states that it cannot come from a third party but one service provider was informed that the request must come from a legal representative. Guidance is urgently needed on the procedure for requesting reconsiderations of negative decisions.

The grounds for reconsidering an NRM decision would potentially be where new evidence or information has come to light. Often though the CA has simply not sought or considered information at the initial decision-making stage by the CA. In the experience of some service providers, the request for reconsideration more often than not challenges this kind of poor decision-making.

Some service providers request reconsiderations of negative decisions where they believe the wrong decision has been made. Others will not, either because they do not have the capacity as they are not funded to prepare requests, or because it is not within their remit. The main government contract holder, the Salvation Army, has no set guidance for its subcontractors regarding when or how requests to reconsider decisions should be made.

A negative decision means a swift termination of government-funded support, and often accommodation, regardless of whether the decision is being challenged. This causes concern amongst many subcontracted service providers. They reported more than one case where the Competent Authority had issued a negative Reasonable Grounds decision but had agreed to re-assess the case based on further evidence from the service provider or solicitor. Despite the fact that the cases were being reconsidered, there was no flexibility in the continued provision of assistance.

The service providers were instructed that the clients had to leave the accommodation within five days and the service provider would not be able to support them beyond that point. This means that any reconsideration request that the service provider prepares is unfunded.

The number of negative decisions that have been informally reconsidered and overturned is not published in the NRM statistics and it is not known if this information is held centrally by the Home Office. However on the basis of twenty Poppy Project service users who received a negative Reasonable Grounds decision and requested a reconsideration of the decision, 20% of the decisions were overturned. Interviewees also reported that simply countering some of the case workers points resulted in a quick adjustment to a positive decision.

## **(2. H) JUDICIAL REVIEW**

Negative NRM decisions may be challenged by judicial review which is a procedure through which an individual is able to challenge the decision or exercise of power by a public body. Judicial review is not an appeal against the initial decision, but consideration of whether or not there was an error of law in that decision. Thus an error of fact cannot support a judicial review (although there are circumstances where an error of fact may be an error of law). For this reason and others a judicial review cannot re-examine the facts and make a new decision, it can only decide on the 'legality' of the decision. Judicial review is a lengthy and costly option in the Administrative Court, a division of the High Court, which is not readily available to all those who may receive a negative NRM decision.

Data available for the negative NRM decisions which have been judicially reviewed does not take into account cases which were settled by the Competent Authority before a hearing date was set. To date, judicial reviews have only been lodged against the Home Office as Competent Authority. No judicial reviews have been lodged against UKHTC.

### **Case Study 4**

On 4th February 2014 Mr Justice Treacy, sitting in the High Court in Belfast, allowed an application for a judicial review of a decision by the UK Border Agency ("UKBA") that the applicant (referred to in the judgment as "RE") had not been the victim of human trafficking. Mr Justice Treacy said there was no evidence in the UKBA's decision letter that there had been any consideration of possible reasons for the lack of credibility as directed by the guidance. He commented that there was just a bare assertion that the applicant's claims were considered to be incredible. He found the decision to be unsafe as there was no evidence to show that there had been a proper investigation or that relevant considerations had been taken into account<sup>14</sup>.

Since 1 April 2013, the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, limits the access to legal aid to proceed to judicial review for certain categories of persons. Schedule 1, paragraph 32, in effect states that a potential trafficked person is not entitled to legal aid before the Reasonable Grounds decision has been made. This means that (unlike an asylum seeker who is outside the scope of LASPO) a trafficked person cannot access legal advice before coming into contact with the authorities and if a negative Reasonable Grounds decision is made, the potential

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<sup>14</sup> [http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/SummaryJudgments/Documents/Court%20allows%20judicial%20review%20of%20UK%20border%20agency%E2%80%99s%20decision/j\\_j\\_Summary%20of%20judgment%20-%20In%20re%20RE%204%20Feb%202014.htm](http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/SummaryJudgments/Documents/Court%20allows%20judicial%20review%20of%20UK%20border%20agency%E2%80%99s%20decision/j_j_Summary%20of%20judgment%20-%20In%20re%20RE%204%20Feb%202014.htm)

trafficked person may have no means to challenge the decision apart from an informal reconsideration without legal support. Similarly, if a negative Conclusive Grounds decision is made, they are not entitled to legal aid. Legal aid is only available for those who have positive reasonable and Conclusive Grounds decisions. In addition, if the potential trafficked person intends to claim asylum they are entitled to access legal aid. Therefore the ability to seek legal advice for persons who do not have a well- founded asylum claim or do not wish to claim asylum is problematic. These new changes have created further inequality for trafficked persons in accessing remedies for poor quality NRM decisions.

## **(2. I) THE IMMIGRATION AND ASYLUM TRIBUNAL (IAT)**

Due to the conflation of the asylum and NRM processes, and negative NRM decisions frequently being served with negative asylum decisions, the two are dealt with together by the legal representative, most usually via an appeal to the IAT. This is usually seen as a preferable option than a lengthy application for judicial review:

Directly overturning a negative NRM decision falls outside of the jurisdiction of the IAT, however the Tribunal can make findings on an asylum claim which contradict the negative NRM decision. So, for example, if a negative NRM decision is based on negative credibility findings the judge may find contrary to this that the applicant is a credible victim.

*"Immigration Judges do not have jurisdiction to rule on NRM but ... they might make comments on the NRM ... So yes, we often get judges criticising the Home Office very severely for not having recognised that the client is a victim of trafficking." (Service provider)*

There are no available statistics on how many individuals were issued negative NRM decisions but who went on to be recognised as victims by the IAT. Data collected by the Poppy Project from female victims of trafficking found that of those who received a negative NRM decision at either reasonable or Conclusive Grounds stage, 16% were granted refugee status on appeal, with the judge recognising them as victims of trafficking. Other asylum cases are still pending.

## **(2. J) SO-CALLED 'HISTORIC' TRAFFICKING CASES**

A number of organisations expressed concern about the emergence of so-called 'historic' case decisions issued to victims at the Reasonable Grounds stage by the Competent Authority. These decisions, following the Home Office Guidance to Competent Authorities, positively identify people as victims of human trafficking, but then go on to say that, because their trafficking situation is 'historic' (i.e. non-recent), they are no longer a victim 'for the purposes of the Convention'. In other words, at the time of their referral to the NRM they are no longer in need of the protection and assistance which is offered to victims by the Convention. The guidance acknowledged that 'many victims will continue to suffer the effects of their ordeal long after they have left it' and stated that 'a gap between the trafficking situation and referral should be seen as normal and not in itself a reason to conclude that an individual should not be treated as a victim.' This can be particularly true in cases where victims were children when trafficked but only come to the attention of authorities or disclose their abuse as adults. Nonetheless, Competent Authorities were able to issue so-called 'historical' Reasonable Grounds decisions because, "[A] negative decision in such cases would not deny that someone may have been a victim of trafficking in the past, simply that at the time of assessment they did not meet the Convention criteria or need the protection or assistance that it can afford." This finding is based upon the length of time which has passed between the trafficking



situation ending, and the person being referred to the NRM. A negative Reasonable Grounds decision made in such circumstances denies the victim their right under the Convention to access a recovery and reflection period (Article 13) and the range of assistance measures (Article 12).

However, a recent judgment, *Atamewan, R (on the application of) v SSHD* [2013] EWHC 2727 (Admin) found the guidance on so-called 'historic' claims to be unlawful. This is a welcome development and guidance has been amended to reflect the decision. It is hoped that cases which have been negatively determined using these criteria will be re-examined. However, guidance has yet to be produced to describe how a Competent Authority should deal with the 'personal circumstances' of a victim whose trafficking situation ended some time ago and the absence of a victim-centred approach continues to make this problematic.

The UK Human Trafficking Centre, now part of the National Crime Agency, agrees that the NRM data is only part of the picture of trafficking. However for all the reasons noted above the ATMG urges caution when interpreting the limited NRM data because of our concerns over Home Office flawed judgements and bias when making decisions.

### **PART 3. THE NRM AND CHILDREN**

***The shortcomings of the NRM are most acute when looking at the treatment of children.***

#### **Case study 5: The trafficking of children for labour exploitation**

A child from Pakistan made a statement that he was taken by a family member to meet a man. In his statement he said *'He then told me that I had to go to work'* And later: *'I had no choice but to do what he told me to. I did not know anyone else.'* And when describing his work he said *'I cried so much and I was very angry with myself. I had blisters on my feet and palms'*. The NRM referral from the local authority described him as a 'vulnerable young person and potentially a victim of trafficking'. His statement 'contains cause for concern around child labour exploitation'. His Care plan states: 'He lacks clear understanding of what exploitative relationship involves' and accepted his situation 'just as fact of life'. His case was rejected by the Home Office Competent Authority.

#### **The NRM Reasonable Grounds negative decision letter stated:**

*"Although you stated you were trafficked for the purpose of forced labour or forced service in the UK, it is your statement that you would personally receive your salary which you used as you pleased."*

*"It is noted you were not under the control of your alleged traffickers when you were encountered by the police... therefore it is not accepted that you require a period of time to recover from the influence of your traffickers"*

*"It is noted that you do not claim to suffer from any medical condition as a result of your alleged experienced as a victim of trafficking and therefore it is not considered that you would need to recover from emotional wounds which you did not sustain as a result of your alleged trafficking experience."*

*"It is also noted that there is no evidence to suggest that you have contacted the police in the UK regarding your alleged experiences as a victim of trafficking. Therefore, it is not accepted that you*



*require time to cooperate with the UK authorities in respect of a trafficking related criminal investigation.”*

**THE NEGATIVE DECISION WAS NOT REVERSED DESPITE REPRESENTATIONS MADE TO THE HOME OFFICE TO RECONSIDER**

In the above case the Home Office NRM Competent Authority ignored so many indicators of trafficking, and specifically those related to children. They also ignored the professional judgement of the Local Authority as First Responder who clearly had voiced their concerns about labour exploitation and trafficking. It is difficult to understand how the Competent Authority was able to reject the decision at the much lower standard of proof needed for a Reasonable Grounds decision of “I suspect but cannot prove”. The Competent Authority did not understand UK legal obligations on child labour; they ignored information from the child’s statement that he was paid intermittently (sometimes not at all) and under the minimum wage, working up to seven days a week and 12 hours plus a day in various locations across the UK arranged by intermediaries and sleeping on the floor with several other young people. The Home Office did not take into account the child’s testimony of his physical and mental health concerns (blisters, crying) but then went on to make erroneous claims about the child’s emotional needs which could not be valid as they have no training in that professional capacity.

The cumulative impact of these poor quality decisions is more visible when comparing NRM statistics for children of UK and EEA nationals and those from outside the EEA. If the types of child labour cases seen above are rejected then we are not capturing the full intelligence picture of child trafficking. The published NRM statistics do not give a cumulative total of adults or children referred since the outset of the NRM in 2009. But there are quarterly reports placed on the National Crime Agency website. The most recent published report is for the quarter July – September 2013. In looking at the table below, the ATMG is again concerned at the variances in decision-making between the two Competent Authorities and in particular for children’s cases where the number of decisions that are left outstanding where the child is from outside the EU. In the figures below it is likely that the UK children are referred with some level of input from police and so the inference is that a confident and quick decision can be made where there is police involvement. This inherently disadvantages those children whose cases have not been investigated, or not been pursued by police or the CPS for any number of reasons.

**Table 4. A sample of NRM statistics for children between July– September 2013<sup>15</sup>**

	Total for Quarter	UK	Vietnam	Ghana	Slovakia
Total number of referrals	105	18	22	5	2
Positive Conclusive Grounds	30 (29%)	16 (90%)	4 (20%)	0 (0%)	1 (50%)
Decision not yet made		1	12	4	1

<sup>15</sup> National Crime Agency <http://www.nationalcrimeagency.gov.uk/publications/117-nrm-statistics-july-to-sept-2013/file> accessed 12/02/2014

### **(3. A) BEFORE THE NRM**

Prior to the launch of the NRM in 2009 there was a lengthy process of consultation led by the Home Office including stakeholders from local authorities, organisations, police and other government agencies about how the NRM would work. During the deliberations on the NRM arrangements for children, there was a general agreement that the situation for children was in fact quite different to that of adults because, unlike adults, children already have some protection measures guaranteed in law irrespective of their immigration status. There was also agreement from stakeholders that the point of identification should be as close as possible to the time when the child is found so that immediate safeguarding arrangements can be put into action. Local Authorities already had in place the powers to investigate and well established multi-agency arrangements with police and other agencies under Section 47 of the Children Act (2004 ) [England and Wales] and the equivalent in Scotland and Northern Ireland. National guidance and procedures for Local Authorities on identification and safeguarding child victims of trafficking have been in place since 2007 and in London as early as 2005. Stakeholders agreed that the professionals working with children, and building trust with children, are best placed to identify them as victims of trafficking. Prior to the introduction of the NRM it appeared that a referral would be an administrative acknowledgement of a decision that was already made by the Local Authority social work team or the police. However, when the NRM was introduced, those earlier recommendations were not acted on and children were channelled into the same NRM system as for adults with NRM decisions being made by the two Competent Authorities, often at odds with the local authority assessments.

### **(3. B) NO REFLECTION AND RECOVERY PERIOD**

Unlike the situation with adults, the Home Office chose not to create a formal reflection and recovery period for children following a referral to the NRM. The reasons given for this were that:

- Children from within EEA had entitlements to stay in the UK and access Local Authority support.
- Children from outside the EEA had access to discretionary leave until they are 17.5 years old as an unaccompanied asylum-seeking child.

This has set in motion an unacceptable and unsafe situation for children who have no option but to claim asylum to regularise their immigration status immediately after they are found. Stakeholders, including legal representatives, asked the Home Office from the outset that children be given a separate leave entitlement as potential victims of trafficking to allow appropriate recovery period for children and allowing more information to be disclosed. Then, and only then, when they have time to consider their legal options could they claim asylum should they wish to do so, knowing what it means. The current situation has led to children, at times quite young children, being forced into the adversarial asylum system at such an early point that they are being challenged by asylum case owners as to the veracity of their situation without having had time to recover, often too frightened to disclose. At the outset of the NRM, the case owner dealing with the asylum claim and the NRM Competent Authority were often one in the same person. New measures have been brought in to change this but the quality of decision-making within this process has been routinely shown to refuse both the asylum claim and the NRM claim at the same time. Children who claim to be aged 17 years and 6 months at the time they are found fall into a precarious loophole in this system and this

has still not been addressed. They are still children by law but the immigration procedures for children of this age do not adjust for victims of trafficking.

### **(3. C) THE CURRENT SITUATION**

The UK has no mandatory reporting of child abuse and there is no mandatory reporting of children to the NRM. The ATMG considers that the duty to identify should be in the hands of those working directly with children in order to improve the overall response to trafficked children and young people. The NRM is not working correctly if professionals have lost faith in it as a critical part of the safeguarding process. Despite an established lower threshold for determining whether a child is trafficked; the actual ratio of positive Conclusive Grounds decisions for children is lower than that of adults which raises questions about whether the criteria for decision-making related to children is being applied correctly.

There appears to be no guidance for decision-making where the trafficking and exploitation initially occurred as a child but because of the natural passage of time the victim is an adult when identified. In these cases it seems that the higher 'adult' threshold is used to make judgements and challenge credibility. Identification should be an on-going dialogue between the First Responder and the Competent Authority but the current mechanism does not encourage this – if the First Responder is led to believe that once the referral is made it is 'job done' and the flow of information back from the Competent Authority is almost non-existent, there is no opportunity for dialogue. This stifles any hope of improving the quality of decision-making. There is apparently no guidance for fast tracking decisions when children are in custody thus having a detrimental impact on whether the child can access their full right to protection.

NRM procedures around children needs to be urgently reviewed to give confidence back to the professionals, who receive regular and quality training, and to stop children falling through the gaps.

ATMG research has found that:

- Some local authorities choose not to refer children into the NRM as they fail to see any benefits in doing so. Some have stated that they fear that referring the child may have a detrimental impact on a child's immigration status if the child receives a negative NRM decision.
- Some local authority social work teams still do not know about the indicators of trafficking or their role as First Responders in the NRM and leadership is lacking.
- Some local authority staff put very little detail on the NRM referral form because they think it is the Competent Authority responsibility to do the investigation, or they don't understand the definition of trafficking or the purpose of the NRM and have had no training in this issue at all. This has the effect of the trafficking claim being refused because the initial information does not reach the threshold for Reasonable Grounds decision.
- There can sometimes be a reluctance within local authorities to accept that they have victims of trafficking in their area and to recognise a child as a potential victim or victim and provide the appropriate support and protection.
- Some social work teams are working with police and others to create a multi-agency NRM referral which the ATMG believes is an innovative good-practice model and should be promoted. However, if a multi-agency referral is made but the NRM Competent Authority

still makes a negative decision, there can be a swift breakdown in trust in the system and the Local Authority must decide on what action to take.

- Referrals coming direct from police have a significantly higher chance of a positive decision than referrals from local authorities.
- Criminal case evidence suggests that there is a significantly greater number of cases prosecuted where the child victim has been trafficked for sexual exploitation than for domestic servitude or trafficking for labour exploitation. This has a direct impact on the NRM decision due to weighting given to police evidence at the time of referral. Not only is this inconsistent with Home Office guidance but it is cause to look at the reasons why cases of child labour exploitation are not being prosecuted and the need for a new child exploitation offence.
- The Competent Authorities making decisions on children's cases have little or no knowledge about child psychology, child development, the impact of abuse and late disclosure of abuse in children.

The UK ratified the UN Convention on the Rights of the Child in December 1991 and the principles are reflected within the Children Act 1989, the Children (Northern Ireland) Order 1995, the Children (Scotland) Act 1995 and subsequent legislation. In relation to safeguarding children, it states that:

- the best interests of the child should be a primary consideration when action is taken concerning them
- children are to be protected from all forms of discrimination
- every child has the inherent right to life, survival and development
- children should not be punished cruelly or in a way that belittles them
- children have the right to be protected from all forms of abuse and neglect and be given proper care by those looking after them
- children who are victims of abuse are entitled to the care and treatment needed to recover from the effects of their mistreatment

Section 11 of the Children Act (2004) [England and Wales] places a duty on Local Authorities and others to safeguard and promote the welfare of all children. Section 55 of the Borders, Citizenship, and Immigration Act (2009) creates a similar duty for Home Office Border Force and UKVI staff but only with respect to children already in the UK. It would be wholly consistent to introduce a new statutory duty for Local Authorities and other public authorities to identify children, as well as adults as victims of trafficking.

## **PART 4 CONCLUSIONS**

The National Referral Mechanism is currently a policy measure and not contained in any legislation. The ATMG believes there must be a statutory duty on public authorities to identify and protect victims of trafficking in the Bill, in line with the obligations in the Trafficking Convention and EU Trafficking Directive. Currently there is no accountability within the identification system: if a decision is challenged by judicial review then only the reasoning of the individual decision maker is challenged. If the NRM was grounded in legislation, then the decision and its implications would apply collectively across the board thus improving the system, driving up standards and positively benefiting not just the individual case in question. This would improve trust in the UK's identification system and would reduce the number of judicial reviews against NRM decisions

The Anti-Trafficking Monitoring group would like to conclude with the following recommendations:

- That a new statutory duty on public authorities to identify victims of trafficking is introduced into Part 3 or Part 4 of the Modern Slavery Bill in order to fully enact Section 10(2) of the Council Europe Convention and Article 11(4) of the Directive that relate to the early identification of victims in co-operation with relevant support organisations.
- A statutory duty to identify would result in a concomitant duty on relevant public authorities to collect data which would then be subject to scrutiny and monitoring by Inspectorates or public bodies.<sup>16</sup> This would enhance reporting by the proposed Anti-Slavery Commissioner, as the information would be in a form that could be shared more readily. The introduction of a new duty to identify victims of trafficking would remove the need to have Part 4 (clause 35) of the Bill. So this proposal has a neutral effect on the Bill itself but has wide reaching positive impact.
- The existing principle of informed consent should be retained regarding the referral of adult victims of trafficking into the NRM.
- That the Home Office UK Visas and Immigration is immediately removed from its role as Competent Authority in the current NRM.
- That the NRM process is recalibrated so that as a gateway to support it becomes a process using a specialist multi-agency panel for decision-making, which includes a formal right to appeal negative Conclusive Grounds decisions.
- That trained professional and independent social workers are included in the NRM decision-making team who have powers to liaise with local authorities and others who refer children and young adults.
- That the Home Office publish full details of the review process that the Home Secretary announced in October 2013.

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<sup>16</sup> Recognising the importance of potential victims feeling safe to come forward for advice and support, such a duty should not be conferred on First Responders who are not government-funded.

## APPENDIX 1

### **List of First Responders**

National Crime Agency

Police Forces

UKVI and Immigration Enforcement (previously UKBA)

Border Force

Gangmasters Licensing Authority

Local Authorities

Health and Social Care Trusts (Northern Ireland)

TARA Project (Scotland)

### **Victim support organisations**

The Salvation Army

Poppy Project

Kalayaan

Medaille Trust

BAWSO (Wales)

Migrant Help

Unseen

New Pathways

NSPCC (CTAC)

Barnardo's