



# KALAYAAN

justice for migrant domestic workers

## Counting the Days: A Study of Kalayaan's referrals into the National Referral Mechanism in 2015

By Patrick Burland

On the 29<sup>th</sup> March 2017 the National Crime Agency (NCA) published the 2016 National Referral Mechanism (NRM) data. This report states that 3805 people were referred into the NRM in 2016. However the report also highlights that of the 3266 people referred into the NRM in 2015, 845 people are still waiting for a reasonable grounds or conclusive grounds decision. <sup>1</sup> The NRM data published by the National Crime Agency indicates the considerable lengths of time in decision making. This report examines more closely the experiences of the 24 people that Kalayaan referred into the National Referral Mechanism in 2015.

### **National Referral Mechanism:**

In 2009 the UK government established a National Referral Mechanism to meet the UK's obligations under the [2005 Council of Europe Convention on Action against Trafficking in Human Beings](#).

The Home Office describes the NRM as a 'victim identification and support process. It is designed to make it easier for all the different agencies that could be involved in a trafficking case to co-operate, share information about potential victims and facilitate their access to advice, accommodation and support.'<sup>2</sup>

Kalayaan is a first responder to the NRM and has held this status since 2009 when the NRM was established. First responders are designated bodies who are able to

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<sup>1</sup> <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/2016-nrm-statistics/788-national-referral-mechanism-statistics-end-of-year-summary-2016/file>

<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/521763/Victims\\_of\\_modern\\_slavery\\_-\\_Competent\\_Authority\\_guidance\\_v3\\_0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/521763/Victims_of_modern_slavery_-_Competent_Authority_guidance_v3_0.pdf)

refer potential victims to the NRM to be identified and provided support. Other first responders include UK Visas and Immigration, the police and local authorities.

Potential victims of trafficking or modern slavery must first be referred to one of the UK's two competent authorities: UK Visas and Immigration (Home Office) or the Modern Slavery Human Trafficking Unit (MSHTU).

The NRM is a two stage process. The first stage after a person has been referred into the NRM is the reasonable grounds decision. The Home Office guidance says, when the Competent Authority receives a referral, they must decide whether on the information available, it is reasonable to believe that a person is a victim. The standard of proof is that the decision maker suspects but cannot prove the individual is a victim. People who receive a positive reasonable grounds decision are entitled to a 45 day supported recovery and reflection period. There is no guarantee of support after 45 days. This period should include access to information, in particular a victim's legal rights, and standards of living capable of ensuring their subsistence through appropriate and secure accommodation, psychological and material assistance.

In the second stage the Competent Authority will be responsible for making a decision on whether, 'on the balance of probabilities', there are sufficient grounds to decide that the individual being considered is a victim of human trafficking or modern slavery. This is referred to as the Conclusive Grounds decision.

### **Reasonable Grounds Decisions:**

All of the 24 clients referred into the NRM by Kalayaan in 2015 received a positive reasonable grounds decision. A positive reasonable grounds decision should entitle an individual to a 45 day reflection period and access to support and safe accommodation. In contrast a positive conclusive grounds decision does not provide any guaranteed entitlements and currently, makes very little difference to a victim's life in practice.

The NCA data for positive reasonable grounds decisions for 2015 NRM referrals <sup>3</sup> shows that 85% of reasonable grounds decisions were positive. <sup>4</sup> Kalayaan believes

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<sup>3</sup> The data for positive reasonable grounds decisions for NRM referrals in 2015 was published by the NCA in Annex G of the NRM Statistics January – March 2016. 85% decisions were positive in the 3081 cases where a

the fact that 100% of the clients referred by Kalayaan into the NRM in 2015 received positive reasonable grounds decisions is a result of submitting high quality and highly detailed referrals.

The Home Office guidance states, 'the expectation is that the Competent Authority will make a reasonable grounds decision within 5 working days of the NRM referral being received where possible.' In practice only 8 of the 24 clients referred into the NRM in 2015 received their reasonable grounds decision within 5 working days. The average number of working days it took for a reasonable grounds decision was 9.5 working days, almost double the time it should take. The longest wait for a reasonable grounds decision was 23 working days.

The delay in receiving a reasonable grounds decision can be very serious for people who have no means to support themselves or those in vulnerable and precarious circumstances. One of Kalayaan's clients was threatened with eviction from the accommodation she was living in while waiting 19 working days for her reasonable grounds decision. The stress and anxiety of extended delays in waiting to access support which is urgently needed can be highly detrimental to people who are already overcoming the experiences of trafficking.

### **Conclusive Grounds Decisions:**

The Home Office guidance for Competent Authorities states, 'The expectation is that a Conclusive Grounds decision will be made as soon as possible following day 45 of the recovery and reflection period. There is no target to make a conclusive grounds decision within 45 days. The timescale for making a conclusive grounds decision will be based on all the circumstances of the case.'<sup>5</sup>

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reasonable grounds decision was made. This excludes the 185 cases where the referral was either suspended or withdrawn or the decision was still pending.

<sup>4</sup> <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/2016-nrm-statistics/711-human-trafficking-national-referral-mechanism-statistics-january-to-march-2016/file>

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/521763/Victims\\_of\\_modern\\_slavery\\_-\\_Competent\\_Authority\\_guidance\\_v3\\_0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/521763/Victims_of_modern_slavery_-_Competent_Authority_guidance_v3_0.pdf)

The 2014 Home Office review of the NRM stated that, ‘UK Visas and Immigration is working to bring conclusive grounds decisions within a service standard of 98% of straight forward decisions within 6 months.’<sup>6</sup>

The 2016 NRM data shows that UK Visas and Immigration has been entirely unsuccessful in such efforts to reach this target. This data shows that of the 3266 people referred into the NRM in 2015, 845 people referred into the NRM in 2015 were still waiting on a reasonable grounds or conclusive grounds decision by 6 January 2017. Each of those people will have waited at least 12 months for a decision.

Of the 24 clients who were referred into the NRM in 2015 by Kalayaan we are aware of the status of the conclusive grounds decision for 22 clients.<sup>7</sup> Only 1 person referred into the NRM by Kalayaan in 2015 received a conclusive grounds decision within the 6 month service standard target described in the 2014 Home Office review. That decision was negative. As of 2<sup>nd</sup> February 2017, 15 clients are still waiting for their conclusive grounds decision. The average waiting time for these clients by this date was 514 days.

When a person who is referred into the NRM receives a positive reasonable grounds decision they will be sent a letter informing them of this fact and its practical implications. These letters currently state,

‘The Competent Authority has carefully considered the circumstances of your case and has concluded that there are reasonable grounds to believe that you have been a victim of modern slavery (specifically human trafficking.) You now have a period of 45 days to recover and consider your options.’

Trafficked persons are expected to be able to sufficiently recover from their experiences of physical and psychological abuse in less than 7 weeks. For the 15 cases mentioned above, the Home Office have taken more than 12 times longer to reach a final decision on their trafficking claims.<sup>8</sup> If the Home Office is unable to make a decision on whether a potential victim has been trafficked within six months how can

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<http://webarchive.nationalarchives.gov.uk/20141202113128/https://nrm.homeoffice.gov.uk/documents/2014/11/nrm-final-report.pdf>

<sup>7</sup> Contact was lost with 2 clients following their positive reasonable grounds decisions. The status of their conclusive grounds decisions and their current circumstances are unknown.

<sup>8</sup> As of 2<sup>nd</sup> February 2017

it expect survivors who have been trafficked to achieve a significant level of recovery in less than 7 weeks?

The 2016 NRM data shows that only 1028 of the people referred into the NRM in 2015 have received a positive conclusive grounds decision. It is unclear of the 1028 individuals given a positive conclusive grounds decision, how many of those were granted leave to remain and how many recognised survivors were issued with decisions telling them to leave the UK. The data also tells us that 1186 people who were referred received a negative conclusive or reasonable grounds decision. 5 of the 24 clients referred into the NRM by Kalayaan in 2015 received a negative conclusive grounds decision. Of these 5 clients we have the dates for 4 of their negative conclusive grounds decisions. The average wait for a decision for these 4 clients was 265 days. This is significantly longer than the 6 month target mentioned in the Home Office's 2014 NRM review.

### **Challenging a negative trafficking decision**

There is no formal right to appeal a negative reasonable grounds decision or conclusive grounds decision. The Home Office guidance explains,

‘Where an individual considers the Competent Authority has made a decision incorrectly, an individual can challenge that decision by way of Judicial Review. However, it may be appropriate for the Competent Authority to reconsider a decision. If a first responder or support provider wishes to submit additional evidence, or they raise specific concerns that the decision is not in line with published guidance, the Competent Authority must look at whether they wish to reconsider the decision. This is not a formal right of appeal and the decision should only be reconsidered where there are grounds to do so.’<sup>9</sup>

In 2 of these cases where the client had a negative conclusive grounds decision, Kalayaan submitted reconsideration requests to the Home Office to challenge the decision. In 1 case, the reconsideration request was rejected and a Judicial Review is now being prepared to overturn the decision. In the other case, the reconsideration

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/521763/Victims\\_of\\_modern\\_slavery\\_-\\_Competent\\_Authority\\_guidance\\_v3\\_0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/521763/Victims_of_modern_slavery_-_Competent_Authority_guidance_v3_0.pdf)

request was successful and as a consequence the negative conclusive grounds decision was withdrawn.

### **Positive recognition**

Only 2 out of the 24 clients referred by Kalayaan into the NRM in 2015 had received a positive conclusive grounds decision by 14<sup>th</sup> March 2017. 1 of the clients had waited 416 days to receive the decision. The other client had an even longer and more difficult wait of 617 days for a positive conclusive grounds decision. This client was initially given a negative conclusive grounds decision, 155 days after they were referred into the NRM, the fastest decision for any of Kalayaan's clients referred into the NRM in 2015. The negative decision was successfully overturned following a Judicial Review claim. This client was particularly vulnerable and following her negative conclusive grounds decision she was forced back into an exploitative living situation whilst she sought legal advice on challenging the decision.

### **Discretionary Leave:**

Victims who do get a positive conclusive grounds decision, who may have waited well over a year for this decision, will receive a letter from the Home Office which explains,

‘The Competent Authority has carefully considered your case. On [date] it was decided that there were reasonable grounds to believe you were a victim of human trafficking/slavery, servitude, or forced/compulsory labour. As a result of further investigations into your case, the Competent Authority has concluded that you are a victim of human trafficking.’

This decision simply confirms that the Competent Authority considers the person to be a victim of human trafficking. It does not provide them any rights to support or residency. People who receive a positive conclusive grounds decision are not automatically granted discretionary leave to remain through their status as a victim of trafficking. The NRM data published by the National Crime Agency does not contain any information about the numbers of people referred into the NRM, issued a positive conclusive grounds decision and granted discretionary leave to remain in the UK. A letter by Sarah Newton, Minister for Vulnerability, Safeguarding and Countering Extremism to Frank Field, Chair of the Work and Pensions Select Committee on 17<sup>th</sup> February 2017 acknowledges that only 12% (123) of those who

received positive conclusive grounds decisions in 2015 were granted discretionary leave to remain.<sup>10</sup>

Of the 2 people referred into the NRM in 2015 by Kalayaan who received positive conclusive grounds decisions, 1 was granted discretionary leave and the other was recognised as a refugee and granted 5 years leave to remain.

### **Conclusion:**

The UK government's response to each annual publication of NRM data is to convey that the data highlights a significant increase in the number of potential victims of trafficking in the UK. In response to the publication of the 2016 NRM data, the Home Secretary, Amber Rudd, declared, 'New figures this week show that over 3,800 potential victims - from 108 different countries - were referred to support in 2016, through the National Referral Mechanism.'<sup>11</sup> There is a very quick response to publicly highlight the large numbers of people referred into the NRM and of claims of commitment for supporting and protecting those who have been trafficked. However too many of the human beings behind these numbers referred into the NRM in 2015 are still waiting for conclusive grounds decisions with no knowledge of the reasons for the delay, when a decision will come or what the decision will be, long after their 45 day reflection period has ended. They may still have an incredibly long time to wait. The 2016 NRM data shows that 16 people referred into the NRM in 2013 and 312 people referred into the NRM in 2014 have still not received a conclusive grounds decision.

The Home Secretary, Amber Rudd, has recently stated that the UK government wants, 'to streamline the process potential victims of modern slavery have to go through when a decision is being made about what exactly has happened to them.'<sup>12</sup> The process for identification needs to ensure that decisions are made more quickly but are also made correctly and without a culture of disbelief and any discrimination based on immigration status and nationality. Finally, the process of the identification needs to ensure that being conclusively identified as trafficked has practical, tangible, positive outcomes. The current responses see people waiting for months and years

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<sup>10</sup> <http://www.parliament.uk/documents/commons-committees/work-and-pensions/Letter-from-Sarah-Newton-MP-to-Chair-re-modern-slavery-session-17-2-2017.pdf>

<sup>11</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/608396/Op\\_Ed.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/608396/Op_Ed.pdf)

<sup>12</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/608396/Op\\_Ed.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/608396/Op_Ed.pdf)

for a conclusive grounds decision that is just a conclusion to a long process. Instead, the moment at which a person is conclusively identified as being a victim of trafficking, should be the beginning of long-term comprehensive support to help them to recover from their experiences and to move forward with their life.