

# Hidden in plain sight

Three years on: updated analysis of UK measures to protect trafficked persons



October 2013

**The Anti Trafficking  
Monitoring Group**

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## **Preface**

In May 2009, a group of nine UK-based organisations established The Anti-Trafficking Monitoring Group (ATMG) to monitor the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings which came into effect in the UK on 1 April 2009. The ATMG now includes in its monitoring also the EU Directive on preventing and combating trafficking in human beings and protecting its victims 2011/36, which entered into force on 5 April 2013.

The nine organisations belonging to the ATMG are:

- Amnesty International's Northern Ireland Office
- AFRUCA
- Anti-Slavery International
- BAWSO (Black Association of Women Step Out)
- ECPAT UK
- Helen Bamber Foundation
- Kalayaan
- POPPY Project (of Eaves Housing)
- TARA (Trafficking Awareness Raising Alliance, of Glasgow Community and Safety Services)

The ATMG works closely with the Human Trafficking Foundation and STOP THE TRAFFIK.



## Acronyms and Abbreviations Frequently Used in this Report

AIT	Asylum and Immigration Tribunal
ATMG	Anti-Trafficking Monitoring Group
COPFS	Crown Office and Procurator Fiscal Service (Scotland)
CPS	Crown Prosecution Service
DEL	Department for Employment and Learning (Northern Ireland)
DfE	Department for Education
DfID	Department for International Development
DHSSPS	Department for Health, Social Services and Public Safety (Northern Ireland)
ECPAT UK	End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes
ECHR	European Convention on Human Rights
EU	European Union
FCO	Foreign and Commonwealth Office
GLA	Gangmasters Licensing Authority
GRETA	Group of Experts on Trafficking in Human Beings of the European Commission
IDMG	Inter-Departmental Ministerial Group
ILO	International Labour Organization
IOM	International Organization for Migration
NASS	National Asylum Support Service
NGO	Non-governmental organisation
NHS	National Health Service
NRM	National Referral Mechanism
OCTF	Organised Crime Task Force (Northern Ireland)
OSCE	Organization for Security and Co-operation in Europe
PPS	Public Prosecution Service (Northern Ireland)
PSNI	Police Service of Northern Ireland
SCDEA	Scottish Crime and Drug Enforcement Agency
SOCA	Serious Organised Crime Agency
TARA	Trafficking Awareness Raising Alliance
UKBA	UK Border Agency
UKHTC	UK Human Trafficking Centre
UN	United Nations

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# Introduction

This report is the fourth publication by The Anti-Trafficking Monitoring Group (ATMG) to monitor and evaluate the Government's efforts to combat trafficking in human beings with respect to the UK's obligations under *Council of Europe Convention on Action against Trafficking in Human Beings 2005* (the Convention) and *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims* (the Directive).

The purpose of this report is to examine the progress in this area since the publication of the *Wrong Kind of Victim?* in June 2010 that assessed the UK's adherence to its obligations under the Convention.

In 2010 the ATMG found that the Government has:

- Misunderstood key provisions of the Convention.
- Not addressed the entirety of the Convention.
- Delegated considerable authority on identification to a flawed mechanism staffed by substantially unaccountable officials.
- Overlooked the necessary safeguards for child victims of trafficking.

The 2013 report revisits key issues and recommendations raised in 2010 by examining three central areas:

- Quality of data collection on trafficking.
- The National Referral Mechanism (NRM), especially the access of trafficked persons to the NRM, quality of decision-making and the overall functioning of the system.
- The treatment of the so-called 'historic' victims by the NRM.

The report also briefly looks at updates on prevention of trafficking and prosecution and outlines developments in the devolved administrations.

## Methodology

This research focused on examining developments from 2010 until 2013 using a combination of desk and field research. Selective sampling of contacts within the ATMG members' networks was used to select research participants.

ATMG researchers and several members conducted semi-structured interviews and focus groups with informants. In addition, 40 competent authority (CA) decision letters on cases of presumed trafficked persons were analysed.

The POPPY Project co-researched and co-wrote sections on National Referral Mechanism and the Helen Bamber Foundation wrote the chapter on the so-called 'historic' trafficked victims. ATMG members in devolved administration provided input into the relevant sections of the report.

## Report Structure

The report is organised into eight chapters and two annexes:

Chapter 1 briefly outlines the situation in terms of data collection on trafficking

Chapter 2 is the largest chapter and assesses the functioning of the NRM

Chapter 3 focuses on the treatment of the so-called 'historic victims'

Chapter 4 examines assistance to trafficked persons

Chapter 5 gives an update on prevention of trafficking

Chapter 6 gives an update on prosecution of traffickers

Chapter 7 examines the situation in relation to child trafficking

Chapter 8 looks at developments in the devolved administration

Annex I

Annex II



**NOTE:** There has been a change in the structure of a number of government departments included in the report. These changes occurred in the research period for this report. Where reference is made to the Home Office Competent Authority, it is understood both the UKBA (which ceased operation at the end of March 2013) and its successor the Home Office unit UKVI and Immigration Enforcement. The Serious Organised Crime Agency under which the UK Human Trafficking Centre (UKHTC) operated has been transformed into the National Crime Agency (NCA) at the beginning of October 2013. UKHTC is now a part of the NCA.

## Executive Summary

Since 2010, a number of improvements have occurred including the area of prevention and awareness raising. The establishment of the National Referral Mechanism (NRM) itself has had a positive impact on raising the awareness about trafficking amongst many professional groups. There have been improvements in data collection in the past three years, as UKHTC's assessments have drawn on data from a variety of sources, and not solely depended on the NRM data-base. However, gaps still remain. In particular there is little information about traffickers, few qualitative assessments and as yet no independent body with statutory powers to request data and information. A welcome development has been the increase in the number of first responders who may refer victims of trafficking to the NRM.

### **Assistance to trafficked persons**

While the numbers of people referred to the NRM have been increasing steadily, the ATMG found that the assistance provided to them has not improved.

On the whole, key provisions of the Council of Europe Convention (the Convention) are misunderstood by the Government and the NRM mechanism remains flawed and access of presumed trafficked victims to assistance unequal, favouring those who come from EU/EEA.

There are cases reported of Home Office first responders failing to identify victims of trafficking and detaining them in Detained Fast Track.

There have been increasing delays in determining both reasonable and conclusive grounds decisions by the Home Office Competent Authority. At the same time little information is sought from service providers to assist in decision making and negative decisions are taken without consulting interested parties, as required by the Home Office guidance.

Dramatic differences in the number of positive NRM decisions granted by the two Competent Authorities (CAs) exist. In 2012, over 80% of EU/ EEA national referred to the system received positive trafficking identification decisions. In comparison, less than 20% of third country nationals referred received positive identification. The UKVI is responsible for decisions related to third country nationals. There is valid concern that the immigration status of a trafficking victim inappropriately influences NRM decisions and that hence the decision making is unfair and discriminatory.

From an analysis of 40 NRM rejection letters issued by the Home Office, ATMG found reason to doubt the findings of the Competent Authority in 36 i.e. 90% of the letters. In particular the Competent Authority showed that it sometimes misunderstood the definition of trafficking; it sometimes misunderstood the effects of trafficking on the victim; it focused on small inconsistencies in the victim's account to question the credibility of the whole account, it rejected claims because of a lack of corroborative police evidence and rejected claims on the basis of trafficking being 'historic'.

In cases where trafficking victims apply for asylum, the Home Office Competent Authority is combining questions of trafficking status and refugee status in one procedure irrespective of the distinctions. This is leading to the denial of trafficked persons' rights to reflection delay and assistance and contributing to poor NRM decision-making.

There is still no formal appeal procedure for negative NRM decisions. Service providers do informally request reconsideration of poor quality negative decisions on behalf of trafficking victims. However as trafficking victims are not entitled to government-funded assistance following receipt of a negative decision, access to this form of redress is inconsistent and unequal. Recent changes to legal aid legislation have also caused further inequality for some trafficking victims seeking judicial review of poor NRM decisions. Trafficked people cannot access funded legal advice unless they have positive decisions or are claiming asylum.

The Asylum and Immigration Tribunal indirectly provides another form of redress for victims of trafficking with negative NRM decisions. In 16% of negative NRM cases sent to the AIT on appeal, the AIT found the asylum applicants were victims of trafficking contrary to the findings of the Home Office case workers.

Service providers and lawyers remain concerned about Home Office decision making which denies victims of trafficking rights to reflection delay and assistance on the grounds that they are no longer in need of such assistance; so-called 'historic' cases. The recent judgement in *Atamewan* finds the Home Office guidance on historic cases to be unlawful and confirms that a person who has been or presently is a victim of trafficking cannot be a victim for some purposes and not for others.

Victims of trafficking who claim asylum do not have access to the same comprehensive assistance available to other victims of trafficking. They are often accommodated further from service providers and only have access to outreach assistance. The kind of assistance and accommodation required by a trafficking victim should be based on need and not on immigration status.

The absence of longer term support beyond the 45 day reflection period is seen as a serious gap in assistance provision. For some service providers it calls into question their professional ethics where they would 'flood' victims of trafficking with assistance for a short time to only cut it off dramatically, without having achieved adequate recovery for the victim. Also the feasibility of 'resettling' someone who receives a positive conclusive grounds decision within the short timeframe given is highly questionable. More flexibility is needed in extending assistance to vulnerable victims, also to guard against re-trafficking.

The absence of longer term assistance for victims issued with discretionary leave to remain is also contrary to the purpose of the grant of leave; which recognises that the person is vulnerable because they are a witness in proceedings or have acute support needs.

Essentially there is no effective assistance that is government funded that allows for the full recovery and reintegration of trafficking victims. Only privately funded service providers are currently capable of providing comprehensive assistance.

### **Prevention and awareness raising**

A number of prevention and awareness raising activities have been conducted especially in the run up to the London Olympics. Many of these activities have been positively evaluated, also for having contributed to plugging gaps in awareness such as on forced labour and child trafficking. Another positive development was the Home Office release of funds in early 2013 for NGOs to train and raise awareness of various professional groups.

On safe return and minimising the risks of re-trafficking, ATMG had recommended in 2010 that the government develop the capacity to conduct detailed risk assessments and develop minimum standards on safe return as part of the NRM. In 2013 there are still no minimum standards on safe return and the re-trafficking of victims that have been referred to the NRM has been reported by service providers.

### **Developments in law**

A landmark judgement in May 2013 at the Court of Criminal Appeal confirmed the importance of the non-criminalisation of victims of trafficking in situations of forced criminality and stated that the Court must stand between the prosecution and trafficked person. The Crown Prosecution Service as a result is revising its guidance on prosecutions where the individual may be a victim of trafficking. In spite of these developments there are reports of increasing numbers of victims of trafficking identified in prisons.

The Home Secretary announced that a single anti-slavery act will be introduced which it is hoped will consolidate the law on human trafficking and contemporary forms of slavery.

### **Child trafficking**

The number of children referred to the NRM has increased in the last year. There are also concerns with the large disparity between the Home Office and UKHTC competent authorities' decisions dependent on whether the victim is a British or EU child or third country national child. This again raises concerns about the inequality of treatment in determining trafficking status.

### **Devolved administrations**

Northern Ireland, Scotland and Wales have seen a range of developments over the past three years. In Scotland and Northern Ireland, cross-party groups on trafficking in human beings have been set

up in the respective parliaments. Wales has appointed the Anti-Human Trafficking Coordinator who coordinates all anti-trafficking efforts across Wales and remains a unique post in the whole of the UK. In all three countries, multi-agency groups have also been set up to take forward specific tasks in the area of anti-trafficking. These groups complement the Joint Strategic Group of the Home Office (JSG) that has representatives of statutory agencies and NGOs from all of the UK.

### **Next steps**

Across the UK, there are currently efforts underway to amend the current legislation. In Northern Ireland, Lord Morrow introduced a Human Trafficking and Exploitation Bill in June 2013 in the Northern Ireland Assembly.

In August 2013, the Home Secretary announced that a single anti-slavery act will be introduced which it is hoped will consolidate the law on human trafficking and contemporary forms of slavery. She also committed to create the post of an anti-slavery commissioner.

In September 2013, Jenny Marra MSP introduced a proposal for a single anti-trafficking bill in Scotland proposing not only unification of the relevant offences, but introduction of protection and assistance provisions for trafficked persons.

These developments provide an opportunity to improve the deficiencies in the current legislation identified by the ATMG in *In the Dock Report*. However, unless a comprehensive anti-slavery bill is introduced that puts assistance to trafficked persons on a statutory footing, the value of such law will be minimal. Internationally, it has long been recognised that an effective anti-trafficking instrument **must** contain provisions for victim protection in addition of criminal offences of trafficking.

# 1. Data Collection

Data collection on trafficking in the UK has improved in the past three years. This is largely down to the efforts of the UK Human Trafficking Centre who have produced two assessments on the nature and scale of trafficking in the UK for 2011 and 2012.<sup>1</sup> In 2010, the Anti-Trafficking Monitoring Group reported that information stored on the National Referral Mechanism (NRM) database did not provide a complete picture of trafficking in the UK. Many victims were never referred to the NRM and were therefore unaccounted for. The UKHTC assessments draw on data and information about potential victims of trafficking from a variety of sources including police forces, the UK Border agency, Gangmasters Licensing Authority and NGOs alongside NRM information. The assessments provide a fuller picture of the number of potential trafficking victims, their country of origin and exploitation types than in previous years.

A number of gaps in data collection however remain. The UKHTC does not have statutory powers or a mandate to request data from government agencies so not all those requested for information respond. Civil society organisations also reported that they are not always able to provide information in the format requested, due to limited capacity or are uncertain about how data will be used.<sup>2</sup> At the same time data collection and analysis is only secondary to UKHTC's main purpose being to act as "a central point of expertise and coordination in relation to the UK's response to the trafficking of human beings".<sup>3</sup>

There is still insufficient data collection about traffickers. In its report *In the Dock* the ATMG identified a significant deficiency in the way data about prosecutions and convictions is collected. While the number of convictions for trafficking offences is low, the number of traffickers prosecuted and convicted for other crimes is significantly higher. The data collection by the Ministry of Justice however does not provide an accurate picture of the number of traffickers brought to justice. The UKHTC assessments provide almost no information about traffickers.

There are also few qualitative assessments about trafficking besides those prepared by civil society. While the UKHTC assessments provide many more details on, for instance, different types of exploitation than before, their purpose is not to provide in-depth analysis of the issues.

The UK is not an exception in terms of the difficulties it faces with data collection. Across Europe, countries have had varied success in capturing the scope and scale of the problem. In 2013, Eurostat, the European Union statistics agency published its first data in trafficking across the EU.<sup>4</sup> The report reflects statistical data on identified and presumed trafficked persons submitted by the Member States between 2008-2010. However, it also acknowledges that the data collected provides only an overview of the problem and that there is further information to take into account.

Since 2009, the ATMG has urged the UK to establish an Anti-Trafficking Rapporteur or Commissioner to independently monitor and assess measures adopted by the Government to tackle human trafficking, report annually to Parliament on the success of these strategies and make recommendations for improvements. It would also contribute to ensuring that the UK meets its obligations under EU Directive 2011/36/EU on preventing and combating trafficking in human beings.<sup>5</sup> It is therefore a welcome development that the Home Secretary, Theresa May, announced in August 2013 that she will introduce an Anti-Slavery Commissioner in the UK. In September 2013, Jenny Marra MSP launched a consultation on a possible consolidated human trafficking bill to be introduced in Scots law and in June 2013 Lord Morrow introduced a Human Trafficking and Exploitation bill in the NI Assembly.

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<sup>1</sup> <http://www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism/statistics>

<sup>2</sup> The UKHTC assessment for 2012 reports that only 10 police forces provided information for the report (out of 43 police forces), no local authority and only three NGOs out of 23 requests. See UKHTC: A Strategic Assessment on the Nature and Scale of Human Trafficking in 2012, August 2013 accessed at [www.soca.gov.uk](http://www.soca.gov.uk)

<sup>3</sup> <http://www.soca.gov.uk/about-soca/about-the-ukhtc>

<sup>4</sup> [http://ec.europa.eu/anti-trafficking/entity.action?path=EU+Policy%2FReport\\_DGHome\\_Eurostat](http://ec.europa.eu/anti-trafficking/entity.action?path=EU+Policy%2FReport_DGHome_Eurostat)

<sup>5</sup> EU Directive (2011/36/EU) Art 19: 'Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field and reporting.'

## 2. Decision Making under the National Referral Mechanism (NRM)

The NRM was established as part of the UK's implementation of the Council of Europe Convention on Action Against Trafficking (the 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.<sup>6</sup>

Official identification of a trafficking victim 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 unit responsible for visas and immigration (previously UK Border Agency) and a multi-agency authority based in the UK Human Trafficking Centre (UKHTC).<sup>7</sup>

The advantages of the 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.'*

In its 2010 report the ATMG found numerous deficiencies with the NRM including a lack of training and coordination of those responsible for decisions on victim status and misunderstandings of the definition of trafficking. Although there have been some positive changes as a result of the NRM, some of these issues remain.

### 2.1 First Responders

The responsibility for initial identification of trafficked persons lies with 'First Responders'. Only authorised First Responders can refer a potential trafficking victim to the NRM for official identification. Where an organisation not listed as a First Responder encounters a potential trafficked person they must request one of the designated organisations to refer that person to the NRM. Currently the following agencies and organisations act as designated First Responders.:

SOCA	Medaille Trust
Police Forces	Kalayaan
UKVI and Immigration Enforcement (previously UKBA)	Barnardo's
Border Force	Unseen
Gangmasters Licensing Authority	TARA Project (Scotland)
Local Authorities	NSPCC (CTAC)
Health and Social Care Trusts (Northern Ireland)	BAWSO
The Salvation Army	New Pathways
Poppy Project	Migrant Help

In 2010 the ATMG recommended that the list of first responders be expanded. Now it includes specialist child protection organisations (NSPCC and Barnardo's) and NGOs in Wales (BAWSO and New Pathways) and Bristol (Unseen). Statistics from UKHTC assessments indicate that there has been a steady increase in the number of referrals to the NRM in the last two years. This may in part be attributed to the increase in the number of First Responders.

### 2.2 Failure to Identify Victims of Trafficking

The ATMG's report 'In the Dock', published in June 2013, found many examples of First Responders failing to identify trafficked persons. The police were sometimes misidentifying trafficked persons as

<sup>6</sup> Council of Europe trafficking Convention Art 10 : '(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...'

<sup>7</sup> In April 2013, the UKBA was split into two units within the Home Office: one responsible for visas and immigration and one in charge of immigration enforcement.



criminals or ignoring indicators of trafficking, particularly in situations of labour trafficking and servitude.<sup>8</sup> 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.

Service providers continued to report cases where the Home Office First Responders fail to spot trafficking indicators during asylum screening interviews. The excerpts from asylum interviews<sup>9</sup> below provide examples of trafficking scenarios which have elicited no response from the authorities:

*"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."*

Where trafficking is not identified, victims claiming asylum may be placed in 'Detained Fast Track' (DFT), 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 was concern that trafficking indicators were being side-lined in favour of 'greater efficiency' in the detention and quick removal of irregular migrants.

The failure of local authorities to identify cases of child trafficking was also highlighted in the ATMG's report '*All Change: Preventing Trafficking in the UK*'. This remains a concern in 2013. There is still a lack of awareness among social workers, who receive no mandatory training on child trafficking, which may mean they are not familiar with the indicators of child trafficking and the appropriate responses to safeguard them. Because children have particular vulnerabilities<sup>10</sup>, those tasked with protecting them should have sufficient knowledge and awareness<sup>11</sup>.

### **2.3 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 in it can vary dramatically.

It was reported that police officers sometimes complete the NRM referral form in the format of the trafficking victim's witness statement. While this may save time for the police it can cause difficulties for others, such as prosecutors.

In contrast, a report by the Centre for Social Justice stated that many of the NRM referrals contained insufficient information for the CA to make decisions.<sup>12</sup> Interviewees revealed that Home Office 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 on status. 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."<sup>13</sup>

<sup>8</sup> Since publication by ATMG in June 2013 of '*In the Dock*' the Crown Prosecution Service and ACPO are reviewing their guidelines on suspected victims of trafficking who are arrested.

<sup>9</sup> Asylum screening interviews were provided by service providers

<sup>10</sup> EU Directive 36/2011

<sup>11</sup> ECPAT UK training courses have demonstrated a distinct lack of awareness of trafficking and of the existence of the NRM.

<sup>12</sup> See 'It Happens Here: Equipping the United Kingdom to Fight Modern Slavery', March 2013, The Centre for Social Justice pg 73-74 (hereafter CSJ report)

<sup>13</sup> Guidance for the Competent Authorities accessed at [www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk)

The inadequate provision of information in referral forms may be due to a lack of training of First Responders. The responsibility for training First Responders lies with the participating organisation or agency. In previous reports the ATMG has commented on the ineffectiveness of First Responder training for the police, where an e-learning package is not mandatory and uptake remains low;<sup>14</sup> and for the Home Office where the information in the e-learning package is limited. More comprehensive written guidance for frontline Home Office staff has though recently been published.<sup>15</sup> It appears that there is still a need for quality tailored training, on the basis of an agreed curriculum, for all First Responders.

## 2.4 Informed Consent to Referral

Adult victims must consent before being referred to the NRM. The concept of informed consent derives from the principle of autonomy which recognises the rights of individuals to self-determination and an individual's ability to make informed decisions about personal matters which may positively or adversely affect them. Informed consent to assistance and support is also required under the Convention and the EU Directive on Trafficking.<sup>17</sup> In order to give informed consent, the trafficked person must be in possession of all relevant facts and be clear about the implications of referral to the NRM. A number of service providers expressed concerns about the extent of informed consent in practice. Where First Responders are obliged to refer potential trafficked persons to the NRM within 72 hours<sup>18</sup> of encountering them, there are limits on how much is understood, particularly if the person is suffering from impaired reasoning and judgment. Under such circumstances it is not possible to give informed consent.

Sometimes First Responders request potential trafficked persons to sign blank NRM referral forms:

*“As I was speaking with the detained young woman, a detention staff member entered the room and put down some papers, telling the woman that she needed to sign them. I asked him what they were and he said he didn't know. I went through them with the woman and noted that one document was an adult NRM form. Only one indicator was ticked 'found in a brothel' and 'incomplete referral to be completed at substantive [asylum] interview'. I advised the woman not to sign”. (service provider)*

Instances where the police asked the presumed trafficked person to sign blank forms were also reported. Alongside the legal and ethical issues this practice raises, it also undermines the chances of a positive decision for the trafficked person as the information may be inaccurate or incomplete.

It was reported that sometimes the Home Office CA automatically forward NRM referrals to the regional police force as an intelligence gathering exercise without the express permission of the presumed trafficked person. The guidance to CAs provides “Wherever possible, allegations of trafficking should be passed to the police as soon as the information is known to UKBA. Potential victims are under no obligation to cooperate with the police themselves and some potential victims may not want the police to be involved at all. This should be carefully considered.” The guidance further states “All disclosures must be made in accordance with the law, in particular the Data Protection Act (1998).”

## 2.5 The Competent Authorities

All NRM referrals are initially transferred by a First Responder to UKHTC. The UKHTC then separates the referrals into two categories: i) cases involving a UK or EEA national or where the person does not have an active immigration issue and ii) cases where the person has linked immigration issue such as an asylum claim. The former are decided upon by the UKHTC CA whilst the latter are forwarded to the Home Office CA.

<sup>14</sup> HC Deb, 8 July 2013, c21W. To date, 24,656 police officers have also completed an on-line training package for human trafficking 18% of the total number of police. There are currently 132,235 police officer as of September 2012.

<http://www.theguardian.com/uk/2013/jan/31/number-police-officers-drops-lowest>

<sup>15</sup>See 'Victims of human trafficking – guidance for frontline staff', July 2013, accessed at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/modernised/cross-cut/protecting-vulnerable/04-victimstrafficking?view=Binary>

<sup>17</sup> See Article 12 Council of Europe Convention and the EU Directive 2011/36/EU preambular paragraph 21.

<sup>18</sup> Home Office NRM flowchart

Identification of a victim by the CA consists of a two stage process in which a reasonable grounds test acts as an initial filter to a fuller more conclusive decision. Having received a referral, a CA applies a reasonable grounds test to decide whether a person is a victim of trafficking. The reasonable grounds test has a low threshold. The test that should be applied is whether '*I suspect but cannot prove*' that a person has been trafficked. The Competent Authority has a target of five working days, from the date of receipt of the referral, within which to make a decision on reasonable grounds. Once a positive reasonable grounds decision is made, the individual is granted a 45 day reflection/recovery period, during which time he or she should not be removed from the UK, and is provided with government-funded assistance.

During the 45 day reflection period the CA should carry out any evidence gathering and further enquiries to reach a conclusive decision on whether the person has been trafficked. To reach a conclusive decision, the CA should consider whether, on the balance of probabilities, there is sufficient information to conclude that the individual is a victim of trafficking.

### **2.5.1 UKVI and Immigration Enforcement (previously UK Border Agency)**

The UKBA CA used to be made up of around 100 delegated full time asylum 'case owners' divided across nine regional asylum support teams in the North East, Yorkshire and Humber (Leeds), Scotland and Northern Ireland (Glasgow and Belfast), Wales (Cardiff), Central London, West London (Middlesex), South Thames Valley and Surrey (Middlesex), North West (Manchester), Midlands and East of England (Solihull), Kent, Hampshire and Sussex (Kent). When the asylum case owner makes NRM decisions they are known as 'case workers'. A report by the Centre for Social Justice stated that to meet the Convention obligations, the CA schedules a weekly rota whereby an asylum case owner rotates into the case worker role for a week in the month to complete NRM related work within the specified timescales.<sup>19</sup> Under the new UKVI structure there are plans to replace this with a specialist full time trafficking team.

NRM referrals firstly go through an Asylum Routing Team or Asylum Intake Team which is then forwarded to the most appropriate Competent Authority which is usually the region where the potential trafficked person is residing. In the case of referrals made on behalf of a potential victim who is in detention, this is routed to teams within the criminal case work directorate. These various teams all receive the same trafficking training and work to the same guidance, but a caseworker's particular areas of wider experience may be reflected in their NRM decisions.

Service providers and others working with trafficked persons reported that they have noticed that certain teams and individual caseworkers make consistently reasonable decisions while others have been known to make poor ones. This was confirmed in a sample of NRM letters analysed for the research. As a result, a trafficked person's chance of receiving a fair decision is subject to arbitrary factors, such as the person's location.

### **2.5.2 UK Human Trafficking Centre**

The UK Human Trafficking Centre (UKHTC) was created in 2006 following the first of two nationwide law enforcement operations used to train police officers and assess the scope of trafficking in the UK. Since 2010 it has been led by the Serious Organised Crime Agency (SOCA).<sup>20</sup> The Competent Authority at UKHTC consists of a multi-agency team including staff from UKHTC, two Home Office seconded officers and The Salvation Army staff. These decision makers work exclusively on NRM decisions unlike the CAs under UKBA that have duties not related to trafficking.

## **2.6 Decision Making and Competent Authority Guidance**

The official guidance for Competent Authorities should assist CAs in deciding whether or not someone is a trafficked person.<sup>21</sup> The same guidance should be used by both UKHTC and Home Office CA. It is currently being reviewed by the Home Office to bring it in line with the EU Directive on trafficking. Some interviewees found that the guidance is reasonable and comprehensive but others found it confusing and contradictory.

<sup>19</sup> CSJ pg.78

<sup>20</sup> SOCA is an Executive Non-Departmental Public Body of the Home Office tackling serious organised crime see [www.soca.gov.uk](http://www.soca.gov.uk). In October 2013, SOCA has been transformed into the National Crime Agency, NCA

<sup>21</sup> See 'Asylum Process Guidance : Victims of Trafficking – Guidance for Competent Authorities' accessed at [ukba.homeoffice.gov.uk](http://ukba.homeoffice.gov.uk)

In determining trafficking status, the guidance asks decision makers, to match the facts of the case to the three constituent elements of trafficking– the act, means and purpose<sup>22</sup>. 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 UKBA guidance for asylum applications and pays considerable attention to the potential trafficked person’s credibility.<sup>23</sup>

Recognising that trafficking can have traumatic effects on victims, the guidance 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: “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. Interviewees felt that while many of the negative NRM letters by the Home Office CA’s acknowledge the existence of mitigating 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<sup>24</sup>.

## 2.7 Decision Making and Information Sharing

When First Responders encounter trafficked persons, the information gathered in the first 72 hour period (in which it is assumed that the referral will be made), may be expanded upon once the trafficked person has been able to access safe accommodation and establish trust with service providers and legal representatives.

The guidance to Competent Authorities recognises that there may be insufficient evidence at the time of referral and envisages that the CA will proactively seek out information that could prove useful in establishing reasonable grounds of trafficking. In particular ‘every effort should be made by the CA to secure all available information from the First Responder, support provider, police or local authority (in the case of children).’<sup>25</sup> Article 10 of the Convention also requires that ‘the different authorities collaborate with each other as well as with relevant support organisations so that victims can be identified...’ The guidance further states that “[i]f the CA concludes that the person is not accepted as a victim of trafficking, before releasing the decision the CA must discuss the decision with interested parties ... to ensure that all information has been gathered.”

Decision makers do always adhere to the guidance or to the provisions of the Convention. Service providers found that it was extremely rare for the Home Office to proactively seek out additional information. Service providers were often obliged to initiate contact if they wanted certain details to be considered before a decision was taken. When contact was made, and there were many instances of this becoming increasingly difficult with certain teams, some interviewees reported that their information was disregarded:

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<sup>22</sup> The definition of child trafficking is different. No means are required for an act to reach the threshold of child trafficking..

<sup>23</sup> See ‘Asylum Process Guidance: Victims of Trafficking – Guidance for Competent Authorities’ accessed at [ukba.homeoffice.gov.uk](http://ukba.homeoffice.gov.uk)

<sup>24</sup> It is noted that UKHTC emphasises that it “continues to pursue the continuing development of a victim centred human rights based approach”<sup>24</sup> whereas that the UKVI guidance states that “The Council of Europe Convention on Action against Trafficking in Human Beings requires us to take a victim-centred approach to tackling all types of trafficking.”

<sup>25</sup> Asylum Process Guidancet p20

*“[T]he solicitor contacted the UKBA and said “there was a professional report coming, please don’t make the decision yet because this will inform your decision ... you don’t know all the facts yet so please wait for this decision”. She sent him emails, faxes, telephone calls, and he didn’t return any of them and then made the [negative] decision without the report”.* (service provider)

Although police and intelligence reports certainly seem to strengthen a claim, less weight is given to reports submitted by experienced support providers and children’s services. To some this represents a disappointing departure from the more collaborative decision making of the past, when the NRM was first created, where the opinions of service providers and other interested parties were weighted equally. Some described the process as bordering on ‘hostile’ and more akin to an immigration procedure than a collaborative process to identify vulnerable people to ensure access to assistance.

On the other hand service providers found that the UKHTC CAs, although less likely to request additional information before issuing a positive reasonable grounds decision, where additional information was required, they were proactive in seeking it.

*“The UKHTC are quite likely to solicit further information from us without us going to them which is useful or can be useful because I think sometimes information that comes into the NRM, you’d be hard pressed to make a reasonable grounds decision based on what you’ve got in front of you.”* (service provider)

Contrary to its own guidance, on issuing negative decisions, it was reported that the Home Office seldom contacted the interested parties. For example, in one case the case worker made a positive reasonable grounds decision and then without seeking further evidence from other agencies made a negative conclusive grounds decision.

The final reporting of decisions by the Home Office CA is also sometimes mismanaged:

*“[T]he whole thing is bedevilled by a series of bureaucratic blunders. For example, we were enquiring about a decision and they came back and said “sorry, we gave our decision in [xxx]”. I asked, “Well, have you told anyone?” And they said “no, we made a decision but we didn’t tell anyone. We didn’t tell the victim, we didn’t tell you, we didn’t tell Salvation Army, didn’t tell UKHTC.”* (service provider)

The failure to inform parties of the NRM decision was noted in the recent case of *L, HVN, THN, T v R*, involving a cluster of four cases examining the non-prosecution of trafficked persons. In the case of HVN, The Lord Chief Justice stated that, “UKBA made a reasonable grounds decision that HVN may indeed have been the victim of trafficking. For some reason this was not communicated either to the prosecution or to the defence, and there is nothing to suggest that either the prosecution or the defence thought about contacting UKBA.”<sup>26</sup>

## **2.8 Timescales for Decision Making**

The timescales for reaching reasonable grounds and conclusive grounds decisions by the Home Office, five and forty five days respectively, are invariably beyond these periods. Service providers reported that the Home Office systematically missed both these deadlines.

Whilst some service providers reported a waiting time of 10 days for a reasonable grounds decision, the Salvation Army, the service provision managing contractor, stated in written evidence to the Home Affairs Select Committee enquiry into Human Trafficking that the average number of days for reasonable grounds decisions is 37 days.<sup>27</sup> The Poppy Project stated that the average time was 39 days from a sample of 49 cases. Other service providers reported that they had waited between two and seven months for reasonable grounds decisions.

The Salvation Army stated that the average wait for conclusive grounds decisions was 104 days after delivery of the reasonable grounds decision whilst the Poppy Project stated that across 30 of its cases the average was 154 days. Other service providers reported between five months to even one year.

<sup>26</sup> *L; HVN; THN; T v R* [2013] EWCA Crim 991

<sup>27</sup> ‘Home Affairs Committee: Written Evidence Human Trafficking’ 9 July 2013 accessed at [www.parliament.uk](http://www.parliament.uk)

Case workers in the Home Office CA have indicated waits of up to six weeks before reasonable grounds decisions can be expected, indicating the extent of the backlogs. Interviewees also reported that occasionally the routing of cases to different teams caused delays and staff turnover meant that it could take time to reallocate a case to another decision maker.

In 2010, the ATMG reported that in 2009 some trafficked persons waited between 49 days and 91 days for a conclusive grounds decision. The situation does not appear to have improved and has possibly been made worse by the increasing number of referrals to the NRM.

While some service providers welcomed the delays in decision-making as they were then able to assist the trafficked person for longer than the given 45 day reflection and recovery period, others reported a significant amount of time spent following up Home Office decisions rather than delivering assistance. The uncertainty of status during the drawn-out decision making process was also a cause of anxiety and re-traumatisation of some trafficked persons. Not all Home Office case workers seemed to appreciate this issue:

*"I managed to get through to [the case owner] and I said you know, this woman, her mental health is being severely impacted upon because you are not making [an NRM] decision and his opinion was well, what's her problem? She's got a roof over her head; she's in NASS accommodation, in G4S. And I found his attitude quite disturbing really."* (service provider)

Such delays may be due to various factors: poor quality information in the referral form that necessitates requests for additional information; over-zealous decision makers going beyond the low threshold test to establish reasonable grounds and disproportionate time taken to assess the credibility of the trafficked person's account. There is also the problem of inadequate time set aside to deal with NRM decisions and possible understaffing. As already noted, the Home Office CA have to combine NRM decision-making with a heavy asylum caseload.

By contrast, it was reported that UKHTC were more likely to make both reasonable and conclusive grounds decisions within the set timeframe.

## **2.9 Differences in Decision-Making**

There is a significant difference between the proportion of positive decisions granted by the UKHTC CA and the Home Office CA (see example tables in Annex I). In 2012 UKHTC dealt with 299 referrals in which it granted around 80% of positive conclusive grounds. In the same year UKBA received 875 referrals and granted less than 20% positive conclusive grounds<sup>28</sup>. The ratio between positive and negative decisions appears to be similar to those for 2011. Between July and September 2011 the UKHTC dealt with 84 referrals of which 96% were given positive conclusive grounds. In the same period the Home Office dealt with 210 and gave 17% positive conclusive grounds. Similarly between October and December 2011 the UKHTC dealt with 65 referrals and granted 80% with positive conclusive grounds, and UKBA dealt with 184 referrals granting 19% with positive conclusive grounds. Between January and March 2013 UKHTC dealt with 122 referrals of which 79% were given positive conclusive grounds decisions while UKBA dealt with 269 and granted 14% positive conclusive grounds.<sup>29</sup> (see Annex I for comparative tables of NRM decisions).

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.<sup>30</sup> 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.

<sup>28</sup> The calculations are based on the actual numbers of decisions made per quarter, taking into account that some decisions were still pending or suspended. Tables with quarterly overview of NRM referrals and decisions were accessed at [www.soca.gov.uk](http://www.soca.gov.uk)

<sup>29</sup> Some service providers reported a recent decline in positive decisions by UKHTC CA possibly linked to the overall increase in victims referred to the NRM in 2012 and pressure on resources allocated for victim support and assistance.

<sup>30</sup> The Council of Europe's Group of Experts against Trafficking in Human Beings (GRETA) evaluation report on the United Kingdom, September 2012. Accessed at [www.coe.int](http://www.coe.int)



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.<sup>31</sup>

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 an 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 other factors however that also possibly contribute to the differences in decision making. Some of these are presented in more detail below in the section analysing NRM decisions. Of particular note is the little weight given to mitigating circumstances by the Home Office CA in establishing the credibility of a trafficked persons account. It is arguable that UKHTC CA, having a longer history of working on trafficking and staff dedicated only to NRM decision-making may give more weight than the Home Office to the mitigating circumstances.

A further important factor influencing decision making, recognised by many of the interviewees and other reports, is the organisational culture of UKBA/Home Office. Before UKBA was appointed competent authority for the NRM its core purpose was and remains to secure the UK border and reduce immigration.<sup>32</sup> It has been subject to significant political pressure to remove illegal immigrants and failed asylum seekers and, in ensuring delivery of its mandate, has adopted an aggressive performance management culture based on targets. This target driven culture, applied to its immigration and asylum work as well as to enforcement, alongside understaffing, has resulted in an increase of poor quality decisions. This is evidenced by the fact that 25% of refused asylum cases are being overturned on appeal.<sup>33</sup>

When organisations are given new roles, as in this case safeguarding trafficked people, political scientists have argued that they make sense of the new challenge through the prism of their existing organisational identity. The victim-centred approach demanded by the Convention and the EU Directive on Trafficking in tackling trafficking has not been an easy fit for the organisational culture of UKBA with targets on removals and a focus on 'tipping the balance' on asylum claims.<sup>34</sup>

It is also recognised that case workers who listen to repeated traumatic accounts may suffer from secondary trauma or vicarious traumatisation which can affect their decision making and lead to inhibited listening. While some Home Office teams state that managers regularly check on staff well-being, organisations working with UKBA (as was) state that generally assistance was not sought after. It was also reported that although there exists a Home Office counselling helpline specifically for asylum case owners, not all case owners were aware of it.

## 2.10 Positive Impact of the NRM

In addition to correctly identifying and referring victims of trafficking to assistance, the creation of the NRM has had a number of other positive outcomes. In particular interviewees reported that awareness of trafficking had increased amongst frontline professionals since it has been put into place. This has led to a rise in training requests and interest from a diverse range of service providers and agencies. The Trafficking Toolkit for Health Professionals to help NHS staff spot and support trafficking victims was cited as an example of the increased awareness of trafficking and recognition of the role of a broader range of professionals.<sup>35</sup> The availability of assistance to victims outside London, as a result of the NRM, has also led to the formation of new regional partnerships to improve local responses, training, intelligence and information sharing on trafficking.<sup>36</sup>

Not only awareness of trafficking but also recognition of the different types of exploitation that victims may be subject to has increased. The fact that assistance provision has broadened under the NRM

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<sup>31</sup> 'Victims are transported from their place of rescue to safe and secure accommodation where they will be cared for'.

Salvation Army website <http://www.salvationarmy.org.uk/uki/TraffickingSupport>

<sup>32</sup> <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/uk-border-agency-business-plan/business-plan/ukba-business-plan?view=Binary>

<sup>33</sup> [http://www.amnesty.org.uk/news\\_details.asp?NewsID=20736](http://www.amnesty.org.uk/news_details.asp?NewsID=20736) and CSJ report p.78

<sup>34</sup> See Alex Balch and Andrew Geddes, "Opportunity from Crisis? Organisational Responses to Human Trafficking in the UK", *The British Journal of Politics and International Relations* 13 (2011), 29.

<sup>35</sup> <https://www.gov.uk/government/publications/identifying-and-supporting-victims-of-human-trafficking-guidance-for-health-staff>

<sup>36</sup> See for example the Bristol Anti-Trafficking Partnership accessed at [www.unseenuk.org/projects](http://www.unseenuk.org/projects)

to include provision for men as well as women has contributed to a greater understanding and awareness of these different forms including forced labour, criminal exploitation, begging, benefit fraud and organ removal. This is also reflected in increased media coverage of children and young people trafficked for criminal exploitation in cannabis factories, to work in nail bars and men and women enslaved by gang masters.

## 2.1 Analysis of NRM decisions

Many service providers have expressed concern with the quality of NRM decisions. The next section presents some of the findings from an analysis of NRM rejection letters provided for the research. The ATMG was only able to obtain Home Office CA NRM letters as service providers were not accustomed to receiving negative decisions from UKHTC and could not provide examples. Forty letters were reviewed and in thirty-six the ATMG found causes 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.

Some service providers also reported concerns that some CA case workers had not given any grounds for issuing negative decisions save for "there are no reasons to believe you're trafficked."

### 2.1.1 Misunderstanding the Trafficking Definition

Case workers are directed to apply the definition of trafficking to the facts of the case at the start of the decision making process. This includes considering the 'act', 'means' and 'purpose' of trafficking in accordance with the international definition. Sometimes the competent authority does not appear to grasp the meaning of these constituent elements.

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 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)*

### 2.1.2 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 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)*

Case workers also have not yet understood that exploiters can take advantage of a victim’s vulnerability in exercising control without having to physically constrain them:

*“It is not accepted that you were exploited by the [xxx] family in light of your willingness to return voluntarily to this situation. It is unclear why you did not seek employment with another family if indeed you felt that you had been mistreated by the [xxx] family.”*  
*(NRM decision letter excerpt)*

In the case of *R v Khan, Khan, Khan*, where victims had returned to an exploitative employer on the promise of better working conditions, Lord Justice Pitchford appreciated the complexity of vulnerability and control, finding, “The unspoken but clear explanation for the workers’ preparedness to return to the risk of further subjection and helplessness was the contrast between the economic circumstances of the families they left behind and even the degraded expectation of a job in the UK ... the return of the workers does not constitute evidence that the conditions to which the workers were subjected were acceptable but, in the circumstances of the present case, is evidence of further exploitation by the offenders of personal circumstances of which they knew they could take advantage”.<sup>37</sup>

In another case, the potential trafficked person had stated to their counsellor that at times the exploiter was kind to them. This was taken by the case worker to discredit their account of exploitation. No reference was made in the rejection letter to traumatic bonding, of which much has been published and which should have first been discounted by a knowledgeable case worker in a fair decision making process.<sup>38</sup>

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 other cases the trafficked person’s inability to recall the names of persons who helped them escape is negatively construed.

In a recently published report on torture and trafficking by the OSCE, it is found that not providing detail or providing inaccurate detail about the trafficker, the trafficker’s whereabouts or how they behaved in a certain situation is by no means an indication that the entire trafficking background is fabricated. ‘For some trafficked persons they may feel that they need to protect themselves and those that have assisted them from future repercussions to themselves and their families... Sometimes clinicians find that there is a “story behind the story”, whereby previously undisclosed information about a person’s history or circumstances means that they are actually at greater risk than it first appeared”.<sup>39</sup>

In some cases Juju<sup>40</sup> has been raised by the potential trafficked person in the referral but this is not reflected in the case workers decision as a mitigating circumstance. This calls into question whether the CA understands this phenomenon or if they disbelieve its effect.

<sup>37</sup> R v Khan, Khan, Khan [2010] EWCA Crim 2880

<sup>38</sup> Also known as ‘Stockholm Syndrome, where the victims in a bank robbery in 1973 became emotionally attached to their captors. See also Dutton, Donald G., and Susan L. Painter. 1981. Traumatic Bonding: The Development of Emotional Attachments in Battered Women and Other Relationships of Intermittent Abuse. *Victimology: An International Journal* 6 (1–4): 139–155., & Dutton & Painter Emotional Attachments in Abusive Relationships: A Test of Traumatic Bonding Theory. *Violence and Victims*, Vol. 8, No.2, 1993

<sup>39</sup> Trafficking in Human Beings Amounting to Torture and Other Forms of Ill-treatment. OSCE, Vienna, 2013

<sup>40</sup> Juju is a spiritual ritual that is abused to instil subjugation of the trafficked victim and control over her.

Frustrated by the lack of competence of certain case workers, one service provider reported:

*'There is a misunderstanding or lack of knowledge or real depth of knowledge around trafficking, how it can be very different in different situations. I often think there is a lack of cultural awareness – so understanding the different implications from this country or that country, they are very different in terms of what makes someone vulnerable.'* (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)

Although the case worker states that the trafficked person cannot be held to account for or speculate on third party actions, the final decision is negative and leaves the impression that the CA will go to extraordinary lengths to discredit a victim's account.

Such speculation or unreasonable demand upon plausibility runs counter to the CA guidance which states that credibility assessments can be subjective and that there is a danger that this "can lead to unfounded assumptions based not on objective information but on the individual's own experiences and beliefs, undermining the balance and fairness of an assessment." To safeguard from this particular issue a 'second pair of eyes' should objectively review the decision before it is issued. However, given that these decisions have been issued it appears that they are not being reviewed carefully enough by other case workers.

### **2.1.3 Credibility**

In 2010 the ATMG found that the disproportionate focus on credibility in determining trafficking status by the Home Office CA was wrong. In 2013, the issue remains. 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 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)

Credibility was doubted where the trafficked person could not produce a medical report diagnosing a psychological disorder connected with the trafficking, despite being unable to access counselling as she was still on a waiting list. This was used to argue that the potential trafficked person did not need the protection of the Convention.

On the other hand where objective evidence of trauma via a medical report was available, the case worker dismissed the report finding that it was not linked to the trafficking but contracted from

another traumatic event, thus breaking the chain of causation. Some service providers have also reported difficulty getting case workers to give weight to objective evidence such as ritual scarring.

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.

Another 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)*

In some cases the inconsistencies identified have been caused by the case worker. In one case the case worker confused the dates of events and declared the trafficked person’s account inconsistent. In another, the case worker failed to confirm information provided by the trafficked person (with respect to her husband’s rank in an organisation in the source country) due to his own inadequate research. This again was enough to declare the account not credible. The Home Office guidance warns the case worker that focusing on minor or peripheral details is sometime counterproductive but again the guidance is not always heeded.

Currently the guidance for asylum, entitled ‘Asylum Instruction on Interviews’ and ‘Considering Asylum Claims and Assessing Credibility’ are being overhauled in consultation. The former includes a section on trafficking, the latter requires one. The ATMG hopes that this process will be effective in addressing the difficulties outlined above.

Another feature of the decision making process by the Home Office CA is the use of information from screening and substantive asylum interviews to cross reference the NRM information (including the referral from First Responders) for inconsistencies. Case workers often make adverse inferences in relation to credibility, and reject the trafficking claim based on the inconsistencies. Guidance to CAs requires them to give the applicant an opportunity to address inconsistencies but this exercise is often not conducted.

Case workers also use information from interested party reports to contrast information given in asylum interviews leading to caution amongst service providers.

*“We submit supporting evidence but you’ve got to be so careful with it because what they tend to do then is they’ll get the report you do and then they’ll get the asylum screening notes and ... they’ll go “ok, that sounds a bit different to that; that’s a little bit different to that” and then they just use it in evidence against them.” (NRM decision letter excerpt)*

The unethical lengths to which some case workers will go to discredit a trafficking claim is best evidenced by a case where a young traumatised child of a trafficked person who described the traffickers as kind was used to discredit his mother’s account of their behaviour.

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)*

ATMG’s report *In the Dock* outlined several deficiencies with the police’s action on trafficking, in particular the fact that trafficking does not feature as a police priority so there are no incentives to



investigate it. This in turn means that police have received little quality training to understand trafficking and there are few resources available to mount complicated investigations which may span more than one country. For a case worker then 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.

#### 2.1.4 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 international protection. But it appears that the Home Office CA is treating these two issues as part of one process and postponing the NRM decisions until after the asylum decision. The asylum decision is often made irrespective of the 45 day reflection period<sup>41</sup>. 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 in part is due to the strict 30 day deadline for asylum interviews following submission of a claim. But sometimes interviews are taking place very shortly after referral to the NRM:

*"[W]e would also like to give [Ms X] an opportunity to explain the inconsistencies of her own material facts in her asylum and trafficking interview, which will of course, be conducted in a sensitive manner. It is noted that the interview has been booked for [xxx date] which is only three working days after you signed the NRM referral form."(service provider)*

The reference to the 'asylum and trafficking interview' is telling; there being in fact no separation between trafficking and asylum questions. Indeed CAs are actively encouraged to "clarify the trafficking issues as part of the asylum process."<sup>42</sup>With respect to the decision letters issued by the Home Office CA, one service provider commented:

*"I can put them next to each other and you would not be able to tell me where the difference was between the two letters. They have literally copied and pasted." (service provider)*

Although it might appear efficient for one case worker to decide on two separate issues, there is a real risk that the trafficking decision will be wrong. Firstly the questions to be asked by the case worker are different; in the case of trafficking, the question is whether the person has been trafficked. 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.<sup>43</sup> 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

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<sup>41</sup> "Asylum interviews can normally be conducted within the prescribed time limits ..." ie those prescribed for the asylum process, not the NRM time scales.  
<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/competent-guidance?view=Binary>

<sup>42</sup> Ibid 40

<sup>43</sup> See also CSJ report at 79 which found that UKBA CAs are not clear on how to make a decision about human trafficking, because the standards of proof for making these decisions are not clearly outlined as they are when making an asylum decision.

Article 4 to instigated investigation by the police<sup>44</sup>, 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<sup>45</sup> or a serious risk of torture or ill-treatment<sup>46</sup> when compared to the Trafficking Convention which requires consideration of the victim's "personal situation."<sup>47</sup> 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.

### 2.1.5 Interpreters

There are many challenges finding quality interpreters for interviews or translators for documents in both asylum and trafficking claims. The failure to find an appropriate interpreter can also lead to significant delays in decision making:

*"[F]or example we are working with a woman from [X country] at the moment, they can't find any interpreter, let alone a female one and they have said sort of eight months so in the meantime we are looking at different options but in the meantime, potentially her trafficking decision would also take eight months." (service provider)*

A proficient interpreter/translator is vital for the fairness of decision making but some service providers have complained of unprofessional interpreters expressing their own prejudices and perceptions. Inadequate interpretation can also lead to inaccuracies or inconsistencies in the information provided to the CA which in turn can damage the credibility of the trafficking victim and lead to negative decisions. One service provider reported having overheard an interpreter, allocated to a police interview, say that girls like the trafficked person were all liars and the fact that the victim could not remember some of the details proved this. There is a need for quality control of interpreters used in the NRM process.

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<sup>44</sup> See *Atemawan* para 51

<sup>45</sup> 1951 Refugee Convention article 33(1) "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

<sup>46</sup> European Convention on Human Rights article 3

<sup>47</sup> Article 14

## 2.II Appeal of Decisions

In 2010, the ATMG expressed concern over the lack of a right to formally appeal NRM decisions or have them reviewed by an independent authority. In 2013, 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.II.1 Informal Requests to Reconsider

Informal requests to reconsider decisions can 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. It was stated 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 reassess 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 unfairness of withdrawing support in these circumstances was explained by one service provider:

*“These girls are not being represented properly, they are not being advocated for, and when they need you the most because of being refused, because maybe an NRM hasn’t been filled in correctly or been done properly and they are refused you can’t support them anymore.”*

As a result of these obstacles, access to this form of redress is inconsistent and unequal. Furthermore, if the First Responder is the Home Office and the individual has not accessed support services before the Home Office CA has made its negative decision it is unlikely that a challenge to the decision will be made.

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.

*“[T]he referrals that I made when we pushed back and asked for reconsideration they’ve had to reconsider because they were not, they were trying to find something that didn’t hold water.” (service provider)*

## 2.II.2 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. 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.<sup>48</sup> To date, judicial reviews have only been lodged against the Home Office as Competent Authority. No judicial reviews have been lodged against UKHTC.

Since 1 April 2013, the Legal Aid, Sentencing and Punishment of Offenders 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 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 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 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 NRM decisions.

## 2.II.3 The Role of the Asylum and Immigration Tribunal (AIT)

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 solicitor, most usually via an appeal to the AIT. 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 AIT, 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)*

*"[I]t went before the court and the judge basically was the one who said "there isn't any reason why you're not a victim of trafficking; everything is there." (service provider)*

Some lawyers reported that they rarely judicially review the NRM decision now if the person has an asylum case, as the AIT will usually decide on the trafficking anyway and judicial review would cause significant delays to resolving the asylum claim. They look pragmatically at what is most beneficial, and for those claiming asylum that is protection and long term stability, not the short term leave that a positive NRM decision may or may not confer.

The absence of support for victims who have received negative NRM decisions also adversely affects the asylum appeals procedure. This means that the service providers, with whom the victim may developed strong relationships, cannot attend hearings nor deal with the often serious psychological impact of any further negative legal findings. One support provider spoke about a client who she had been supporting, whose AIT hearing was scheduled after she had received a negative NRM decision. The worker recognised the high emotional needs of this person and the

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<sup>48</sup> Hansard <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm121031/text/121031w0002.htm#12103179000046> (10/01/13)]

need to support her through the appeal process, which was scheduled a matter of days after the negative decision was given, but was not allowed to attend.

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 AIT. 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.<sup>49</sup> Other asylum cases were still pending.

Of course this challenge to negative decision-making is only available to those who are claiming asylum and not to all. Overall there is no satisfactory and equally accessible route for victims of trafficking to challenge NRM decisions.

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<sup>49</sup> Sample size: 29 women accessing support from the Poppy Project who had received negative NRM decisions either at RG or CG stage.

### 3. 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,<sup>50</sup> 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.'* 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 it is hoped that the guidance will be amended soon to reflect the decision, and that cases which have been negatively determined using these criteria will be re-examined.

#### 3.1 The Emergence of 'Historic' Case Decisions

The lack of an NRM model in the UK which genuinely embraces "the multi-disciplinarity necessary to combat trafficking in human beings effectively"; and which works "in collaboration with other Parties and relevant support organisations" means that presumptions have been made in 'historic' cases concerning the 'recovery' of victims who have been out of their trafficking situation for some time.<sup>51</sup> Decisions which under-estimate or make assumptions about victim needs for protection and assistance pose risks to safety and inhibit the process of recovery.

In decision letters issued to victims the justification for finding that a person who has been a victim of trafficking, but is not entitled to protection and assistance under the Convention, is based upon the presumption that they have had *'time to recover'* or *'move on with their lives'*. There is no support for this to be found in the Convention.

The guidance does not specify a period of time required to presume that 'recovery' had taken place but in the experience of the Helen Bamber Foundation the duration indicated in NRM decision letters varied from between two months to eight years. The effect of the guidance was to conflate the identification process with an assessment of individual needs so that the question of whether *'a person is a victim of trafficking'* and *'do they require the protection of the Convention'* were effectively the same decision, to be determined simultaneously. The ATMG has argued that they are not the same thing and should be given separate and distinct consideration at the appropriate stages in the investigation of each individual case.

This latter approach has been confirmed in the *Atamewan* judgment in which it was held that a person who has been, or is presently a victim of trafficking, cannot be a victim for some purposes

<sup>50</sup><http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/competent-guidance?view=Binary>

<sup>51</sup> para 56 of the CoE Convention Explanatory Report referring to paragraph 1(b) of the Convention, Article 1: "The purposes of this Convention are: [inter alia] (b) to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses ..." The Explanatory report continues, "Not only is multidisciplinary basic to the Convention, it must also be basic to any national action on trafficking in human beings." See also Article 12(5) "Each Party shall ... co-operate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims."

and not for others, i.e. that a reasonable grounds decision cannot be negative on the grounds that the person does not have protection and assistance needs. Thus Lord Aikens finds:

[77] "[...] I have difficulty with the notion that "victim status" has various components. In my view it is better to analyse Articles 4 and 10(2) in terms of two questions: the first is to ask whether there are "Reasonable Grounds" to believe that the person concerned has been the victim of trafficking. If he or she has been, then that person can (at least provisionally) be accorded "victim status [...]"

ATMG agrees that the correct identification of a victim of trafficking is contained in Article 4 of the Convention, and does not require any considerations beyond determining the nature of the crime they have suffered.<sup>52</sup> It is worth noting that the Convention clarifies that a person is a 'victim' even if the intended exploitation has not yet occurred and so at the earliest stage of victim identification, it leans towards a wider interpretation rather than a narrow one.<sup>53</sup> This complies with the 'harm based' definition of a victim which can be found in the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the UK Code of Practice for Victims of Crime ('the Code').<sup>54</sup> The latter instructs police officers to take into account only the nature of an allegation of criminal conduct which is made, in order to determine whether they are entitled to receive services from the Code. An enhanced service under the Code is also provided to those victims who are intimidated witnesses or are vulnerable for health reasons.<sup>55</sup>

The standard of proof for a positive reasonable grounds decision is deliberately low (*I suspect but cannot prove*) because of the recognition by the Convention that victims of trafficking require urgent protection "from removal from the Party's territory" and the assistance provided by Article 12.<sup>56</sup> The assistance measures they should access under Article 12 are explicit recognition of the importance of multi-agency specialists working together to assist victims in response to trafficking. This is emphasised by the Convention, its Explanatory Report,<sup>57</sup> the OSCE,<sup>58</sup> and the Directive<sup>59</sup> as well as NGOs and specialist organisations who work with victims of trafficking.<sup>60</sup> Organisations that provide these assistance measures may be able to provide further evidence to confirm their identification as a victim (and to outline their immediate assistance needs).

### 3.2 The Human Impact of Trafficking in the Context of 'Recovery'

The decision in *Atemawan* is welcome because, in the experience of some service providers, the passage of time after escape from a trafficking experience is no indication that a victim has 'recovered', nor that they no longer need protection and assistance. In fact, the period post escape, if

<sup>52</sup> Art.4 of the Convention:

For the purposes of this Convention :

- a "Trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- b The consent of a victim of "trafficking in human beings" to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- c The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- d "Child" shall mean any person under eighteen years of age;
- e "Victim" shall mean any natural person who is subject to trafficking in human beings as defined in this article.

<sup>53</sup> CoE Convention Explanatory Report.:87.Under the definition, it is not necessary that someone has been exploited for there to be trafficking in human beings. It is enough that they have been subjected to one of the actions referred to in the definition and by one of the means specified "for the purpose of" exploitation. Trafficking in human beings is consequently present before the victim's actual exploitation

<sup>54</sup> See A/RES/40/34 at [www.un.org/documents/ga/res/40/a40r034.htm](http://www.un.org/documents/ga/res/40/a40r034.htm)

<sup>55</sup> <http://www.gloucestershire.police.uk/Other/Code%20of%20Practice%20for%20Victims%20of%20Crime/Downloads/item5830.pdf>

<sup>56</sup> CoE Convention Article 10(2)

<sup>57</sup> CoE Convention Explanatory Report para 135 "Even through the identification process may be speedier than criminal proceedings (if any), victims will still need assistance even before they have been identified as such. For that reason the Convention provides that if the authorities "have reasonable grounds to believe" that someone has been a victim of trafficking, then they should have the benefit, during the identification process, of the assistance measures provided for in Article 10(1) and (2)."

<sup>58</sup> OSCE publication "National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook" 2004. "When there are reasonable grounds to presume someone is a victim of trafficking, it is good practice to grant the person a "reflection delay" in order to stay legally in the country of destination long enough to stabilize their situation and ensure that they are not placed in danger or immediately re-trafficked on their return home."

<sup>59</sup> Article 11(4) "Member States shall take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in co-operation with relevant support organisations."

<sup>60</sup> *Ibid* Article 12(5)

lived in 'survival mode' in conditions of poverty, inadequate housing or destitution, for example, can exacerbate injuries, conditions and symptoms that are rarely obvious to others in the early stages of contact.

In the OSCE's report, 'Human Trafficking Amounting to Torture and Other Forms of Ill-treatment', it has been demonstrated that the physical and psychological injuries that victims of trafficking suffer can be as severe as those suffered by persons who have been tortured.<sup>61</sup> Trafficking is a form of inter-personal violence (which may be physical and/or psychological) and the impact of trafficking is profound and long lasting. In line with the Istanbul Protocol, a manual guiding the investigation and documentation of torture, specialised clinicians document the physical and psychological injuries, illnesses/conditions of victims. The work often identifies complex forms of trauma which are not immediately apparent, especially to people who are not clinically trained.<sup>62</sup>

It is only after detailed, holistic assessment that effective treatment for sustained recovery is able to begin. The psychological recovery of victims of trafficking cannot be plotted on a graph that predictably travels gradually or steeply upwards over time. Significant setbacks may happen months or years into the recovery process. Therefore clinicians' approach is to monitor clients' '*individual recovery progress*' rather than trying to determine whether a client *has* or *has not* 'recovered'.

Treatment is focused upon working towards '*sustained* recovery in accordance with each client's individual needs in terms of their current ability to manage their daily lives and the challenges they face'. This requires the establishment of a long term therapeutic relationship of mutual trust between client and clinician, from which the ability to make positive, trusting relationships in the wider community can be re-built. It is essential for the safety of each person that their *autonomy* (independence) and *agency* (the ability to act/make decisions) which is lost through the process of trafficking, can be regained.

The Competent Authorities who make the identification decisions on victims of trafficking are described in the UK Guidance as 'specialists' but it is not clear how that 'specialism' extends to determining whether victims have 'recovered' from the impact of human trafficking.<sup>63</sup> This decision is made remotely, from documentation only, and often solely on the basis of trafficking indicators on the NRM Referral form.<sup>64</sup>

As a result of the Home Office CA being able to make presumptions about the individual 'recovery' of victims', their decisions are based on findings which are unjustifiable from a clinical perspective. From a sample of three reasonable grounds decision letters issued to HBF clients recently in 2013, these presumptions have included:

- A victim of trafficking at their time of referral to the NRM 'is no longer under any influence from traffickers.'

This should never be presumed at first contact with a victim of trafficking; in all cases, time is required to consider an account of trafficking. Those who work with victims over multiple sessions often find that the whole account becomes more coherent as a relationship of trust is established and the client feels able to speak more fully about their experiences. Disclosure of sensitive information concerning traffickers may take weeks, months or even years.<sup>65</sup>

<sup>61</sup> 'Trafficking amounting to Torture and Other Forms of Ill-treatment, OSCE, Vienna, 2013, p.45 to 117

<sup>62</sup> <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>

<sup>63</sup> "Decisions about who is a victim of trafficking are made by trained specialists in designated 'Competent Authorities'." The designation is not

amplified. <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/competent-guidance?view=Binary>

<sup>64</sup> <http://www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism>

<sup>65</sup> Trafficking in Human Beings Amounting to Torture and other Forms of Ill-treatment <http://www.osce.org/cthb/103085>



- A victim has 'recovered' or 'has not suffered long term physical or psychological damage from their experiences of trafficking because they have not submitted any documentary information that supports this'.

At any stage medical evidence can be extremely difficult for victims of trafficking to obtain. Moreover, such evidence should not be required at all at the reasonable grounds stage given the low standard of proof.

- A victim who 'has not sought medical help for ongoing psychological needs while living in the UK irregularly after escaping their trafficking situation is therefore not in need of medical help'.

The expectation that a person with psychological or physical health problems should self-diagnose is unreasonable, especially if they are vulnerable or suffering trauma related symptoms.

- A victim who has lived in very low socio-economic circumstances, working irregularly to survive over a matter of years, has 'gone about with their life without problems and [has been able] to re-integrate into society'.

This misunderstands the realities for people who live irregularly, without status and in fear of being removed from the country, and of being imprisoned or detained if they come forward or try to register for services.

- A lapse of time since leaving a trafficking situation is in itself the basis of a 'reasonable expectation that the victim has recovered from the influence of the trafficker [and] attained a minimum level of psychological stability'.

In all such cases the attainment of any 'level of psychological stability' is a clinical decision, preferably made by a clinician who specialises in working with victims of trafficking.

- A victim who has benefitted from seeing a doctor and has been referred by their solicitor for counselling sessions' means that they have therefore 'had time [and assistance] to move on from their trafficking situation and would not benefit from a 45 day Recovery and Reflection period'.

### 3.3 The Role of the 'Recovery and Reflection Period' in the Context of Sustained Recovery

Victims, who are denied access to a recovery and reflection period at the crucial time when they come forward to the authorities, are unable to begin their 'recovery' or to enter into any process of 'reflection'. The physical and/or psychological injuries inflicted, together with complex forms of trauma victims may suffer are prolonged if they are left without access to appropriate services.<sup>66</sup> People who have been trafficked but nonetheless receive a negative reasonable grounds decision may continue to live in situations of poverty, without status, appropriate accommodation or access to services. Some may remain in prison or be detained because their trafficking background has not been understood.<sup>67</sup> This increases their vulnerability over time and heightens their risk of further harm/re-trafficking.

Victims also may be deeply affected by legal outcomes, especially those that contain messages which are negative or contradictory. Trust in the authorities and systems set up to help them as victims of a crime may be lost, and this can diminish the prospects of successful prosecutions of traffickers as well as providing an example to other victims that undermines their confidence in coming forward.

<sup>66</sup> pp.84 - 87 Trafficking in Human Beings Amounting to Torture and other Forms of Ill-treatment <http://www.osce.org/cthb/103085>

<sup>67</sup> If a person's trafficking experience is seen as 'historic' the links between the offences which they may have committed and their trafficking may not be understood. HBF is aware of a Reasonable Grounds decision made on an individual made while he was serving a prison sentence but, while it was acknowledged that he 'had been' a victim he was no longer 'for the purposes of the Convention'. This decision denied him the opportunity to have his conviction reviewed. Also where a reasonable grounds decision is not maintained a trafficking victim claiming asylum is liable to have his or her case processed under the Detained Fast Track

The direct link between the confidence of victims in systems for their protection and assistance and their ability to disclose their experiences has recently been highlighted in the high profile 'Savile Enquiry' and the police operation 'Yewtree'<sup>68</sup> in the UK. This investigated allegations made by victims of child sex abuse dating back to the 1970s. A report produced by NSPCC and the Metropolitan police<sup>69</sup> stated that:

*'The largest proportion had never spoken about their experiences before. Many of the latter had kept their abusive experiences a secret for several decades. The reasons offered for not speaking out previously included:*

- Fear of not being believed or taken seriously
- Shame being brought on one's self or the family
- A perception that they were responsible
- A lack of trust in statutory agencies and feeling the justice system; was ineffective in prosecuting the offender
- A fear of getting themselves or the perpetrator into trouble
- A perception that the abusive behaviour was 'normal
- The perpetrator used threats and coercion to silence them

*The service offered by the NSPCC Helpline was victim-led...reassuring callers that information provided by them would be taken seriously and would be shared with and assessed by the police.'*

This approach has been found to be effective in helping victims of crime to come forward, but unfortunately it has not been applied to victims of trafficking who were being issued with 'historical' case decisions.

Another key finding in *Atemawan* is that the Home Office is under a duty to investigate allegations of human trafficking as well as the police. In this specific case, the Home Office were under a duty to trigger an "effective investigation"<sup>70</sup> and their failure to do so breached Article 4 ECHR.<sup>71</sup>

It is important that UK policy is revised in line with the lawful expectation that victims are provided with the protection and assistance under the Convention. The *Atemawan* Judgment echoes the concerns expressed by GRETA, the body of experts responsible for monitoring the implementation of the Convention internationally which criticised the UK in its report of 2012 for using 'elapsed time since the ending of a situation of exploitation and a presumed diminished urgency of needs for social assistance or protection' as key considerations in victim identification.

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<sup>68</sup> The police investigation into alleged sexual abuse by Jimmy Savile and others, which started in 2012.

<sup>69</sup> p. 20 Giving Victims a Voice: Joint report into sexual allegations made against Jimmy Savile <http://content.met.police.uk/cs/Satellite?blobcol=urldata&blobheadername1=Content-Type&blobheadername2=Content-Disposition&blobheadervalue1=application%2Fpdf&blobheadervalue2=inline%3B+filename%3D%22294%2F278%2Fgiving+victim+a+voice+FINAL.pdf%22&blobkey=id&blobtable=MungoBlobs&blobwhere=1283597099119&ssbinary=true>

<sup>70</sup> As required by Article 1(b) CoE Convention. See paras 89 to 91 of *Atemawan R (on the application of) v SSHD [2013] EWHC 2727(Admin)*.

<sup>71</sup> Art. 4 ECHR Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this article the term "forced or compulsory labour" shall not include:
  - a. any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
  - b. any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
  - c. any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
  - d. any work or service which forms part of normal civic obligations

## 4. Assistance Provision to Trafficked Persons

In providing for a 45 day reflection period the UK goes beyond the minimum requirement of 30 days contained in the Convention.<sup>72</sup> However numerous service providers expressed concerns about the limited period of assistance provided under the NRM. They questioned how well 45 days-worth of assistance can realistically address the needs and vulnerabilities of trafficking victims and provide for their recovery and ultimate reintegration as the case of *Atemawan* demonstrates. The risks with moving victims on too quickly from assistance provision included re-trafficking, which some service providers saw as an increasing trend. There was also worrying anecdotal evidence to suggest that service providers have been advised to make victims homeless after 45 days; destitution making them eligible for other services, and so reducing the strain on the limited resources available within the NRM.

There are also concerns with the assistance offered to victims of trafficking who claim asylum, in particular whether they are provided with appropriate accommodation and comprehensive assistance in keeping with their the Convention Article 12 entitlements. Recent information might indicate a possible shift from the provision of comprehensive assistance, including accommodation, to assistance on the basis of outreach support. From a review of the Salvation Army's statistics in April 2013, 111 potential victims were accommodated and 61 were provided with outreach services.<sup>73</sup> By July only 86 were accommodated and 84 supported on an outreach basis. .

### 4.1 Reflection Period and Delayed Decision Making

The reflection period should be triggered once the competent authority has positively identified a victim of trafficking at the reasonable grounds stage. However as a result of the slippage in decision-making by the competent authorities, who may take longer than the allocated five days, it is not always clear when the reflection period begins and ends. A victim may have been receiving assistance from the service provider upon referral to the NRM, long before receipt of the reasonable grounds decision. In some cases the victim may have already received 45 days-worth of assistance before the reasonable grounds decision is even made.

In these cases it appears that the 45 days of assistance begins at the time the victim is first assisted. The service provider must then apply for an extension of stay after 45 days of service provision where the NRM decision is delayed. Extensions of stay were being issued less frequently, possibly due to increased referrals to the NRM and a squeeze on existing service provision. There was therefore increasing pressure on the service provider to move the trafficked victim on whilst still technically in their reflection period. This was obviously disruptive and contradictory to the aims of a reflection and recovery period as much of the time would have been spent anticipating the decision of the competent authority. In addition, where the reasonable grounds decision was negative, this raised questions about the efficient use of resources which were used by someone who was not technically entitled to them.

Another difficulty arises with the failure to issue conclusive grounds decisions within the 45 day period. What then happens to the victim? It appears victims must still be moved on but without any clarity as to their further rights and with all the insecurity that this creates.

*'...we've had that before where there is pressure to move them on, even though conclusive grounds decision hasn't yet been made, there is still the pressure to be "are you moving them on, are you getting them out, are you bringing them on into the community?"*

Many service providers also highlighted the evident contradiction between the 45 day period as a time to recover for the victim but at the same time a period for evidence gathering on the part of the competent authority to arrive at a conclusive grounds decision.<sup>74</sup> This would often require in-depth

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<sup>72</sup> CoE Convention Art 13 – Recovery and reflection period. The EU Experts Group on Trafficking in Human Beings recommended a period of three months reflection delay see 'Opinion on reflection period and residence permit for victims of trafficking in human beings', 16 April 2004

<sup>73</sup> Statistics for the website for July 2013 <http://www.salvationarmy.org.uk/uki/trafficking>

<sup>74</sup> The guidance to Competent Authorities at p.30 provides: 'Competent Authorities should attempt to gather all available information before deciding to interview during the first 30 days of the recovery and reflection period, unless there are reasons why this would be appropriate.'

interviewing and scrutiny of the victim's account including possibly asylum interviews and interviews with the police. To fulfil both these objectives in the allotted time is not possible and forces victims to share their experiences at a time that should be given to recovery.<sup>75</sup>

*'Ultimately, the difficulty with the NRM is the time, the deadlines that are put on everyone for gathering information. It is not trauma informed.'*

This cannot be described as a victim centred approach.<sup>76</sup>

## 4.2 Differences in Treatment for Asylum Claimants

The Convention places a positive obligation on parties to provide victims with appropriate and secure housing, psychological and material assistance and access to emergency medical treatment, without any unjustified distinctions.<sup>77</sup> Measures cannot be provided differently on grounds of sex, age or nationality, unless that treatment can be reasonably justified.

Where a trafficked person claims asylum (in addition to being considered under the NRM) as a certain proportion of non EU/EEA nationals do, they are required to apply for and be transferred to accommodation intended for asylum seekers known as 'NASS' accommodation.<sup>78</sup> In 2010 the ATMG report raised concerns about the housing of a significant number of trafficked people in NASS accommodation, which was not considered to be secure and appropriate and this issue remains. Requests have been made by the main government contractor for guidance to be provided on minimum standards of accommodation for potential trafficking victims.<sup>79</sup> Also if someone has already entered safe house accommodation then following an application for asylum, the service provider must refer that person immediately to NASS to assist a prompt move to the NASS accommodation.<sup>80</sup>

*'If it's a non-EU woman we would be having to look at moving her or doing a Section 95 application; possibly even earlier than the 45 days, if you know, if she's eligible for other accommodation.'*  
(service provider)

Following transfer to NASS accommodation it appears that a victim's enjoyment of the 45 days of assistance provision may be curtailed. The guidance for competent authorities however recommends in these cases '*Victims who are not housed in specialist accommodation (including NASS) may require outreach support to fulfil their entitlements under Article 12 of the Convention.*'<sup>81</sup>

In some situations this arrangement can work and assistance provision is adequate. The TARA Project for example supports female victims who are housed by NASS. However where staff have concerns regarding the safety or suitability of the accommodation they advocate to ensure that they are moved. They also ensure that the trafficked persons Article 12 rights are met.

There are concerns that victims who are moved straight into NASS accommodation are not always being offered the required outreach support. Between July 2011 and June 2012 only 7% of referrals accepted by the Salvation Army for support (both accommodation and outreach) were from the Home Office<sup>82</sup> and yet they made 49% of referrals to the NRM<sup>83</sup> during the same period. Possibly victims are refusing the support offered by the Home Office or are simply not in a position to understand any offer made.<sup>84</sup> But it is also possible that the assistance available is just not offered. A significant number of women accessing Poppy Project services, who were housed immediately in

<sup>75</sup> See also CSJ report at p 169 as to the incompatibility of the two aims during the reflection period.

<sup>76</sup> Guidance to Competent Authorities at p.7: "The Council of Europe Convention on Action against Trafficking in Human Beings requires us to take a victim-centred approach to tackling all types of trafficking.

<sup>77</sup> See Article 12 CoE Convention and Explanatory report para 68

<sup>78</sup> From April 2013 potential victims who have made an asylum application are referred to Asylum Support Services (ASS) immediately to be accommodated. Salvation Army written evidence to Home Affairs Select Committee 9<sup>th</sup> July 2013

<sup>79</sup> See Salvation Army written evidence to the Home Affairs Select Committee who write: 'The identification and treatment of people in the asylum system remains a concern. Minimum standards for ASS accommodation to be used by potential victims of human trafficking would be helpful'.

<sup>80</sup> Salvation Army written evidence to Home Affairs Select Committee

<sup>81</sup> Guidance for Competent Authorities accessed at [www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk).

<sup>82</sup> Supporting Adult Victims of Trafficking, update on the first year of The Salvation Army's anti - human trafficking contract, The Salvation Army October 2012

<sup>83</sup> UKHTC NRM Statistics [www.soca.gov.uk](http://www.soca.gov.uk)

<sup>84</sup> Sometimes the availability of assistance may be explained to victims as part of the asylum screening process which can be an overwhelming and stressful experience. The information therefore may not be properly understood or acted upon.

NASS accommodation, received no outreach support from service providers. Legal representatives of victims were aware of victims who had been referred into the NRM but were unaware of any trafficking-related assistance.

Some outreach service providers for victims have reported being contacted directly for support by victims in NASS accommodation. They have been informed of the possibility of assistance by other victims also housed in NASS accommodation, rather than through the official route of referral by the Salvation Army.

*'...sometimes somebody may be a month into their 45 day period before we get to contact them. So we are having to request extensions or say look, we are going to assume that the date that their support starts is the first day of the 45 day period otherwise they are missing out on support.'*  
(service provider)

A leaflet exists that gives victims an overview of their entitlements as a victim and contact details for the Salvation Army, TARA and Women's Aid, however it does not appear that these are being widely distributed. There is no information provided in the positive reasonable grounds notification letter about support available, which would be an easy way of providing the relevant information. It is important that even if a potential victim does not request or accept support when referred to the NRM, they understand their entitlements. It is also important to ensure that an initial rejection of assistance should not lead to the irreversible exclusion of access to assistance, should the victim change her/his mind later.<sup>85</sup>

There are concerns that potential victims who are housed away from service providers will not receive the same amount of outreach support, given that the staffing hours funded are limited and a whole day could be taken up with one appointment due to travel.<sup>86</sup> This might not be such a problem if the decision between offering more acute support of safe housing or less intense outreach support was based on need. However since the decision is based on immigration status alone there is a real risk that a client with high needs will not receive sufficient assistance.

The assessment of support needs for victims located at some distance from the service provider is also problematic. Often these assessments will be conducted over the phone and the Salvation Army has recognised that the extent of support needs will not be immediately apparent:

*Typically, the more realistic level of support required is only likely to begin to emerge as the client progresses through his/her recovery and reflection period.*<sup>87</sup>

In determining the suitability of NASS accommodation it appears that the key criteria taken into account by the authorities is whether or not the potential victim risks being located by her trafficker. If there is no risk, then NASS accommodation is deemed suitable.<sup>88</sup> This appears to be based on a limited view of what constitutes risk for a trafficked person. In the experience of the Poppy Project, a victim is more likely to be at risk from attempted suicide than of being located by her trafficker. Mitigating risk from the trafficker is a process that needs to be worked through and understood by the victim, as being located by the trafficker is most often the result of the victim making contact with the trafficking network or disclosing his or her whereabouts to those who may be pressured into passing this on to the trafficker<sup>89</sup>. This is something that needs to be covered in risk assessments as soon as the potential victim is housed and should be regularly reviewed during the period of assistance. It is therefore potentially dangerous if there are delays in receiving outreach support and worse if assistance is not being provided at all.

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<sup>85</sup> Guidelines for the Development of a Transnational Referral Mechanism for Trafficked Persons in Europe: ICMPD 2010 p 38

<sup>86</sup> *Accommodation needs to be located where outreach support can be delivered in a timely way to victims who often have fears for their personal safety.*

Salvation Army written evidence to the Home Affairs Select Committee

<sup>87</sup> Support Needs of Male Victims of Human Trafficking: Research Findings, Salvation Army, June 2013 p 4

<sup>88</sup> The ATMG is aware of a case post April 2013 where the potential victim was NASS eligible but was placed in contracted safe housing as she had previously experienced harassment from her trafficker whilst in NASS accommodation.

<sup>89</sup> This can be for multiple reasons such as attachment to the trafficker (Stockholm Syndrome), family pressure and financial need, previous threats, debt bondage, the use of oath-taking.

Sometimes vulnerable victims who seek asylum are being sent to 'initial accommodation', after referral to the NRM.<sup>90</sup> This is accommodation in mixed gender hostels and is inappropriate for a number of victims, especially those who have experienced gendered violence. This practice also seems to conflict with the EU Directive on gender-specific assistance.<sup>91</sup>

### Case Study

B was trafficked for domestic servitude and sexual exploitation. Her trafficker reported her as a visa overstayer and she was arrested and kept in cells for 4 days. She attempted suicide whilst in custody and was taken to hospital then to immigration detention. In detention she was recognised as a potential victim of trafficking and given a positive reasonable grounds decision. She was told that she would be released into mixed gender initial accommodation and was very distressed by this. The Salvation Army were contacted to request safe housing but the referrer was told that as B was not destitute and was eligible for NASS accommodation then they could not offer her housing, despite her obviously high support needs. The Home Office case owner was so concerned about B's vulnerability and even her ability to travel unaccompanied to the accommodation that they refused to release her into initial accommodation. B was eventually transferred to female only NASS accommodation.

Besides risks of possible harm from their trafficker, victims need to feel safe in their accommodation if any kind of recovery is to take place. The Poppy Project described a case where a recently escaped victim had been housed in initial accommodation and was too frightened to leave her room.

Victims are also at risk of further exploitation by others, unconnected to their trafficker. Service providers recognise that victims can enter into abusive and exploitative relationships after they have escaped the trafficker and remain at risk of re-trafficking. Again this is something that needs to be addressed in support work. Placing victims in initial accommodation, where they can be easily targeted, increases these risks.

The distinctions being made on accommodation provision and assistance on the grounds of the nationality of trafficking victims, since so many of the non-EU/EEA nationals seek asylum, is possibly discriminatory. These distinctions are not based on the need of the victim which should be the only consideration. The effect of this alternative approach to assistance is clear to some service providers:

*'Three victims were rescued at the same time but two of them were placed in service provider safe houses with comprehensive assistance and the third was placed in NASS accommodation with outreach support....the difference in their countenance was just huge. The girls that had been through the safe house were a lot more confident, settled, calm...they felt calm in knowing "I've got this support and this is what's happening; I feel like I know how to talk to the solicitor and where to go if this happens; where to go if that happens". Whereas, the girl in the community was just...bawling her eyes out and this is, like I say, the same amount of time as the other girls and just no confidence whatsoever... and basically she had seen her outreach worker maybe twice and the rest of it had been done over the phone and so she just didn't feel like she knew what was going on.'* (service provider)

Another unfair outcome for potential victims from these arrangements is the impact it can have on the competent authority's decision making. A lack of access to counselling services and assistance and advice in connection with cooperating with the authorities and reporting the trafficker may result in there being no multi-agency information available to contribute to the decision-making. Such individuals are therefore less likely to be granted discretionary leave on the grounds of cooperating with the police or on the basis of personal circumstances, for instance where they have particular medical needs.

<sup>90</sup> Asylum seekers who are not detained but are in need of financial support or accommodation are sent to initial accommodation centres. The stay in initial accommodation can be 3-4 weeks before dispersal.

<sup>91</sup> The EU Directive 2011/36 recognises the gender-specific phenomenon of trafficking and that women and men are often trafficked for different purposes. For this reason, assistance and support measures should also be gender-specific where appropriate.'

### 4.3 Access to Psychological Assistance

The right of victims of trafficking to receive psychological assistance is contained under CAT and the EU Directive on Trafficking. Victims commonly suffer from Post Traumatic Stress Disorder (PTSD), amongst other mental health needs. The National Institute for Health and Clinical Excellence guidelines recommend a minimum of eight to twelve sessions of therapy to treat PTSD. However in reality the time needed to access appropriate counselling, not to mention complete treatment, is significantly longer than the given 45 days.<sup>92</sup>

*Some staff have commented on the difficulties in accessing appropriate counselling, especially during the 45-day period and the impact that beginning a counselling course without completing it can have on the client.*<sup>93</sup>

For service providers who do not have in-house counsellors, which is the majority<sup>94</sup>, potential victims wishing to access psychological support will usually have to be put on waiting lists. This applies to both NHS services (where the wait can be weeks or months) and other free counselling services. The waiting list for specialist counselling services for victims of trafficking, such as the Helen Bamber Foundation, can be several weeks and at times many months. This means that many victims will never receive psychological assistance within the reflection period. Sometimes victims have applied to the charitable 'Victim Care Fund' in order to be seen as fee-paying clients to avoid the long wait. Charitable funding is thus delivering the assistance which the State is required to provide under article 12 of the Convention.

For the service providers with in-house counselling, problems have arisen over the ethics of commencing counselling and then abruptly terminating it after the 45 day period. It was reported that one counsellor had to contact her professional regulatory body to seek advice on whether or not it was ethical to accept work under such conditions. A compromise was proposed so that she was able to offer extra appointments in order to close the sessions more safely and in a manner consistent with professional duties.

### 4.4 Longer Term Assistance

Many service providers would advocate for an NRM system which concentrates on the wellbeing and recovery of the individual and that would allow for the delivery of longer-term assistance, as was possibly more the case in the past before the introduction of the NRM:

*'It's so much more focused on things like getting them a solicitor, getting their health done, get this, get that, because that's their immediate stuff in the 45 days; rather than there used to be a bit more flexibility so we could do a little bit more looking at the social side of things and getting them more built into the community and helping them out with stuff like that.'*

*'I think having, on balance, providers being able to make professional judgments as to how long someone needs that support for, so I think more flexibility within the NRM to allow for that would be really helpful.'* (service provider)

Currently under the government's contractual arrangements for assistance, the 45 day period is extendable to 90 in certain circumstances. Service providers have to apply for extensions, as seen above, even when the victim is still within their reflection period. Equally if the victim has received a positive conclusive grounds decision but has already exhausted the reflection delay, an extension must be requested for further assistance, as the conclusive grounds decision provides no further entitlement to assistance. Requests for extensions are normally justified on the basis that the victim has particular support needs but they are often needed because of the time it takes to access new accommodation. Extensions are usually granted for one or two weeks at a time. The request is sent to the Salvation Army who then submits it to the Ministry of Justice. Generally it was felt that the

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<sup>92</sup> In addition there would appear to be a lack of counsellors trained in working with trafficking victims (particularly male victims). See 'Support Needs of Male Victims of Human Trafficking: Research Findings', Salvation Army, June 2013

<sup>93</sup> Support Needs of Male Victims of Human Trafficking: Research Findings, Salvation Army June 2013 p 18

<sup>94</sup> In Scotland, the Scottish Government has been funding since 2011 a consultant clinical psychologist and assistant psychologist to work with TARA service users 3 days a week to ensure compliance with obligation to ensure access to psychological services for victims.

opinion of service providers was respected when an extension was needed. But some service providers felt that it was becoming more of a challenge to have extensions granted.

It appears that more flexibility with the duration of assistance is given in Scotland:

*(The Scottish) government are quite clear about you are the support providers we will listen to you. If you are ever audited, as long as you can justify why you took the decisions you took, it's fine. (service provider)*

#### **4.5 Funding for Services**

Many service providers fund assistance to victims from their own sources to supplement the government-funded services. Where extensions are granted for further assistance, even in cases where NRM decisions have been delayed, then the service provider must pay 50% of the rate granted for the 45 days. Equally where victims are resettled following the end of the reflection period, funds must be found by service providers to supplement the limited government provision.

Despite the obvious concerns of professionals involved in caring for trafficked people, the UK government has no current plans to increase the period of assistance.<sup>95</sup>

#### **4.6 Post Reflection Period**

On receipt of the conclusive grounds decision, there are narrow timescales for moving service users on. For those who receive a positive decision (with or without a grant of leave) resettlement is funded for a further two weeks. If a negative decision is made, then support terminates after five days. Service providers expressed concern with these unrealistic timescales for resettling victims, either in the community or to return to the home country. They also question the ethics of abruptly ending support in this way. Also those not recognised as victims but still with important support needs, may find themselves particularly vulnerable.

Evidence from support providers suggests that the target of moving a person out of services preoccupies everyone from the moment a person first receives assistance. For third country nationals this could mean giving them access to solicitors to advise them on an asylum claim.<sup>96</sup> For EEA/EU nationals this might mean registration at a job centre to make themselves available for work, despite the fact that they may not be fit for work during the recovery period.

Moving on from support to independent living is often a delicate process because at the point of leaving a secure environment, the former victims may still manifest many of the vulnerabilities that were evident when they first received assistance, even though a number of their immediate needs may have been met. They may be at risk from those within their community and from those who may target them due to their vulnerability and previous experiences of exploitation. Limitations of legal status and entitlements can also reduce the chance of safe, sustainable integration. There is some flexibility in extending assistance where for instance there is a viable move-on plan, such as an application for NASS housing where an application for asylum has been made or a plan to return to the country of origin. However extensions cannot be granted where there is no viable move-on option.

Due to the fact that EEA/EU nationals can legally enter and live in the UK, it is often assumed that they are less vulnerable at the point of leaving services.<sup>97</sup> However they possibly face greater risks of homelessness and a lack of support than victims who are seeking asylum. Those who are particularly vulnerable are those with greater physical and mental health needs, substance abusers and those of retirement age.

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<sup>95</sup> 'There are no plans to change the rules on access or the length of the recovery and reflection period, which is longer than the 30 day minimum stipulated by the Council of Europe Convention and can be extended in cases where there are high levels of trauma or acute support needs' Immigration Minister Mark Harper, Parliamentary Question, Hansard 25 Jun 2013 : Column 174W

<sup>96</sup> Concerns have been raised that third country nationals who have no leave to remain or legal entitlement to assistance with accommodation may feel pressured to make an asylum claim in order to access ongoing support via NASS.

<sup>97</sup> EEA/EU nationals may be entitled to welfare benefits, housing benefit and local authority housing assistance if they satisfy certain entitlement conditions, which differ for the different types of benefit, and includes an 'habitual residence' test. See [www.homeless.org.uk](http://www.homeless.org.uk).



Third country nationals who are not claiming asylum but have acute support needs, including those who are not physically fit to travel and so cannot return to their country of origin, are also particularly vulnerable, especially as they often receive no assistance from the local authority as vulnerable adults. This is for example the case for migrant domestic workers who came to the UK on tied work visas. They are more likely to go to a further exploitative situation or be re-trafficked due to existing debts or the situation that led them to migrate in the first place.

For those who receive negative final decisions service providers have commented:

*It's impossible to do everything in five days which is why you're getting so many negative outcomes with people going back to their traffickers; people choosing to live on the streets; go back to exploitative decisions and situations; or just disappear.*

Support providers also questioned the ethical implications of providing a safe and supportive environment only to cut off access to it within such a short time frame:

*'..we raise women's expectations and say you have these rights and these entitlements and then at the end of the period, because the move on is so challenging and so difficult for a lot of the women, they are left with nothing and sometimes I think are we right to raise expectations and flood women with support for short periods of time and it worries me to be honest.'*

*'The unintended consequence, of course, of that is that you're repeating a cycle of behaviour with a lot of these people of building up trust and then crushing it. So, we have actually said to people before that; you now want to stop and think before you refer someone in because you may actually do more harm than good.'* (service provider)

Beyond the agreed resettlement provision, anything that service providers want to provide as follow on support beyond this is at their own cost. Some manage to provide follow-on support through non-trafficking work such as English for Speakers of Other Languages classes or drop-in services, which places these services under further pressure.

#### **4.7 Residence Permit and Leave to Remain**

*'The elusive residence permit! No-one really knows what it is or whether it really exists.'* (service provider)

Under article 14 of the Council of Europe Convention States Parties may issue renewable residence permits to victims where (i) the competent authority considers that their stay is necessary owing to their personal situation; (ii) the competent authority considers that their stay is necessary for the purposes of their co-operation with the competent authorities in investigation or criminal proceedings.<sup>98</sup>

It was evident during the research that there were varying levels of knowledge and some confusion around the granting of a 'residence permit' to victims of trafficking. This may partly be just a question of language as in fact the residence permit is a grant of discretionary leave to remain (DLR), which entitles the person to work and access public funds, and there is more than one way that a victim of trafficking can be considered for a grant of DLR:<sup>99</sup>

- If the victim has received a positive conclusive grounds decision and is cooperating with the police, there is an ongoing investigation and their ongoing presence in the UK is needed they should be granted discretionary leave for 12 months and 1 day. The police should request this.

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<sup>98</sup> Council of Europe Convention on Action against Trafficking in Human Beings, article 14 accessed at [www.conventions.coe.int/Treaty](http://www.conventions.coe.int/Treaty)

<sup>99</sup> According to information provided by UKBA, between 1 April 2009 and 27 October 2011, out of the 373 non-EU nationals conclusively found to be victims of trafficking, 262 (i.e. 70%) were granted some form of temporary residence permit. Out of them, 68 persons received 12-month residence permits in order to co-operate with the police, 25 received residence permits of up to three years due to their personal circumstances, 96 were granted asylum for five years, 10 received humanitarian protection for five years, 51 were granted discretionary leave to remain for up to three years, five were granted indefinite leave to remain (for various reasons), and six domestic workers were granted 12- months leave to remain

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- Where the UK Competent Authority has conclusively identified the applicant as a victim of trafficking and the personal circumstances of the case are so compelling that a grant of leave is considered appropriate, DL should be granted. The period of leave will depend on the individual facts of the case but must not be less than 12 months and 1 day and normally no more than 30 months (2.5 years).<sup>100</sup>
- Where the victim has lodged a legitimate compensation claim against the trafficker and a grant of leave would help secure justice for the trafficked person and assist in ensuring the trafficker faces the consequences of their actions.<sup>101</sup>

The instruction on issuing DLR in these cases was amended to the grant of 12 months and 1 day to ensure that those who may be pursuing an asylum and/or humanitarian protection claim retain a right of appeal.<sup>102</sup> A grant of discretionary leave will also be considered in conjunction with a related asylum claim and this can be granted up to 30 months. Irrespective of the instruction noted above on minimum periods of leave, there are cases where victims had received a positive conclusive grounds decision but were only granted 6 months DLR and not the minimum of one year and one day without explanation.

Discretionary Leave is granted outside the Immigration Rules. It must not be granted where a person qualifies for asylum, humanitarian protection, or where there is another category within the Immigration Rules under which they qualify.<sup>103</sup> The granting of the 'Residence Permit' is not based on risk on return that would be considered under an asylum/ humanitarian protection application.

As EU/EEA nationals have the right to remain in the UK, it is sometimes assumed that they would not benefit from being granted discretionary leave. However there are several reasons why victims of trafficking who are also EEA/EU nationals may benefit from discretionary leave. As it entitles their access to public funds and employment, it may aid recovery, enable them to act as a witness against their trafficker(s) and reduce their vulnerability to homelessness and further exploitation either in the UK or in their country of origin.<sup>104</sup> EU/EEA nationals may be lawfully in the UK but to qualify for benefits, they must pass a 'habitual residence' test or 'right to reside' test. Those who are not in a position to seek work, have not previously been working legally, especially those who have mental or physical health needs, addiction issues and those of retirement age, may fail and not qualify for benefits.<sup>105</sup> Guidance has been issued to Home Office staff regarding the issuing of the discretionary leave for EEA/AU nationals.<sup>106</sup>

A number of support providers confirmed that EEA/EU nationals accessing their services had been granted discretionary leave. This is an important provision that should be preserved, especially given that traffickers target vulnerable EU nationals who have been left without work and housing and there is a risk of re-trafficking both within the UK and on return. However, the guidance needs to be added to the Home Office instructions on Discretionary Leave.

Prior to ratifying the Convention, the UK was cautious about the issue of residence permits for victims of trafficking in case it encouraged more illegal migration to the UK and fraudulent trafficking claims.<sup>107</sup> The UK had also opted out of the EU Directive on the residence permit for victims of trafficking. It was therefore expected that a residence permit would not be automatic for identified

<sup>100</sup> UKBA Asylum Police Instructions Discretionary Leave 4.5

<sup>101</sup> Ibid 101

<sup>102</sup> S.4.5 UKBA Asylum Policy Instruction Discretionary Leave provides: Trafficking Cases: 'Period of leave will depend on individual facts but must not be less than 12 months and 1 day and no more than 30 months. The minimum period of leave ensures that a victim of trafficking who is refused asylum but granted DL has a right of appeal against the rejection of their asylum claim by virtue of s.83(1)(b) national Immigration and Asylum Act 2002'

<sup>103</sup> Home Office Asylum Policy Instructions

<sup>104</sup> In very exceptional circumstances EEA/EU Nationals may also be granted asylum.

<sup>105</sup> In the case of Romanian, Bulgarian and Croatian nationals they must also apply for an accession worker registration card (unless exempt)

<sup>106</sup> Instructions to staff will reflect the UK Border Agency policy that whilst it would not normally be necessary to grant Discretionary Leave to an EEA National, in certain circumstances this may be the most appropriate course of action.

A decision will always be made on the basis of the individual facts of the case and an EEA National will still need to meet the relevant requirements under the Discretionary Leave policy. However, where it is considered appropriate and the criteria are met, the revised instruction to decision makers will enable a grant of Discretionary Leave to an EEA individual and any family members to be made

Letter from Head of Decisions and Appeals, Operational Policy and Rules Unit UK Border Agency dated 26 March 2013

<sup>107</sup> OSCE/ODIHR 2006/2007 Review on the Protection of Trafficked Persons in England and Wales (National Referral Mechanism Assessment) 30<sup>th</sup> January 2009

victims. Service providers found that there is resistance to issuing longer term discretionary leave more widely to trafficked people, which would allow them to work and receive social assistance, in case this operated as a pull factor for illegal immigration.

At the same time however they reported that for victims who were cooperating with authorities it was fairly straightforward to request and be given a temporary stay, although some providers noted that they had to provide information and guidance to the police who were unaware of the process. Some police officers were also reluctant to request DLR before trial, lest this be seen as an inducement for the witness to give evidence and be manipulated by the defence. The high threshold for granting the leave based on personal circumstances was also questioned:

*'Your access to residency is not trauma informed, it's very much about cooperating with the police or incredibly high tariff medical needs that have to be evidenced by medical professionals which can be very difficult to do in the timescales that have been set.'* (service provider)

There appeared to be a general lack of clarity about what constitutes the need to be issued discretionary leave on the basis of personal circumstances. Was it linked to the fact that the person needed physical or mental health support or because they had been receiving such support?

C was trafficked to the UK by a diplomat who exploited her in domestic servitude. She escaped and reported the trafficker to the police but they took no further action due to the fact that the trafficker had diplomatic immunity. She was given a positive reasonable grounds decision and placed in safe housing via the Salvation Army, where she started accessing counselling services. Following a positive conclusive grounds decision the residence permit was requested based on her personal circumstances and the case owner indicated she would be given this. However, as she had to leave her accommodation and was relocated to a different part of the country, she was informed that she would not be granted the leave as she had no proof that she was engaged with counselling services.

Where victims are issued with discretionary leave it can take some time before the 'Immigration Status Document' is issued which entitles them to work or apply for benefits. They can then find themselves in a difficult position where they are no longer entitled to assistance, since the two weeks following the conclusive grounds decision has past, and the service providers must move them on, and yet cannot support themselves nor apply for asylum related assistance, even if they have an outstanding asylum claim, because they have been granted leave to remain. This effectively leaves the victim in an assistance gap and puts pressure on service providers who must request an extension of stay or fund the individual themselves.

It is of concern that a significant number of victims have no further access to assistance, including resettlement support, by the time they receive their conclusive grounds decision and have been issued discretionary leave. This seems to be contrary to the purpose of the grant of leave as it is issued on the basis that the person is either vulnerable because they are acting as a witness, are going through what can be a traumatic and complicated civil case or have acute support needs. Leaving victims at this point therefore without any specialised support seems inconsistent.

Overall there is no effective system of assistance to victims of trafficking in the UK which functions from the identification of a trafficking victim through to their reintegration. Those left without adequate support may find themselves isolated, vulnerable and at risk of further exploitation. Currently the only hope for longer term comprehensive assistance for victims of trafficking in the UK is through the private funding of service providers.

## 5. Trafficking Prevention

Prevention of trafficking is one of the three pillars of the Council of Europe Convention. Chapter II lists a wide range of measures that states should take to ensure appropriate systems and processes are in place to prevent trafficking. These measures should also be combined with measures required by the Convention to ensure that the exploitation of victims is prevented.

In its report *All Change* the ATMG found that the UK has mainly used awareness-raising campaigns as its means of prevention, rather than other measures included in the Convention, such as social and economic initiatives and training. Furthermore, the ATMG highlighted that the absence of a comprehensive prevention strategy represented a major obstacle to tackling the underlying causes of trafficking.

The initial tool of awareness-raising, The *Blue Blindfold campaign* was launched by the UK Human Trafficking Centre in 2007. Questions were raised about its message and impact and its contribution in increasing awareness.<sup>108</sup> The campaign was never evaluated, except for an evaluation carried out by the Department of Justice in Northern Ireland.<sup>109</sup> The campaign has now been discontinued and there are currently no plans to revive it.

Between 2010 to 2013, several prevention activities have been carried out with the support of Government departments. Some of these activities have gone beyond general awareness raising, taking into account the need to focus actions on particular target groups. Evaluations are available for some of these, giving us an opportunity to consider their impact. Other prevention activities have not been evaluated or their evaluations are pending or not available.

A series of awareness-raising and other prevention activities were undertaken by the London 2012 Human Trafficking Network, a coalition of 59 organisations that was set up in 2009 to reduce the risk of trafficking in relation to the London Olympic Games. The network was coordinated by statutory agencies in partnership with civil society organisations. The awareness-raising activities included:

- The UKHTC identified the main source countries of victims of trafficking and engaged with the British Consulates in those countries and worked with Anti-Slavery International to provide information and online training to embassies.
- The Metropolitan Police supported a campaign developed by Stop the Traffik that included stickers with information about trafficking and contact numbers in London mini-cabs.
- The UK Border Agency distributed leaflets with information about rights of migrant workers and forced labour (produced by Anti-Slavery International) at ten UK ports during the Olympic Games.

An independent evaluation of the Network was commissioned by the Mayor's Office for Policing and Crime (MOPAC), the United Kingdom Human Trafficking Centre (UKHTC) and the Metropolitan Police Service (MPS). GLE carried out the evaluation to establish whether it was successful in meeting its objectives and provided a good practice model. The evaluation assessed the work of the network positively and found for example that: the activities detailed in the Network's Action Plan had been delivered; that the Network contributed to creating a more hostile environment for trafficking in London and that, as a result, it supported preventive action. Awareness-raising and training activities were seen as the most successful both in terms of impact and outputs produced. The evaluation also found that: "the Network addressed the issue of forced labour and the vulnerability of children to trafficking, thus contributing to filling a gap that had also been identified by the Group of Experts on Action against Trafficking in Human Beings (GRETA), established by the Council of Europe to ensure state parties' compliance with the Convention".<sup>110</sup>

A good example of multi-agency prevention work was a project in the Czech Republic conducted by UK Human Trafficking Centre and Anti-Slavery International:

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<sup>108</sup> All Change. Preventing Trafficking in the UK. ATMG, London 2012, p.31

<sup>109</sup> For more information see chapter 9, <sup>109</sup> All Change. Preventing Trafficking in the UK. ATMG, London 2012

<sup>110</sup> Human Trafficking and London 2012 Network, an evaluation delivered by GLE. p.38

At the beginning of 2012, the UKHTC carried out an in-depth analysis of NRM data available on one of the top countries of origin for victims of trafficking, the Czech Republic. The analysis identified the demographic profile of trafficked persons and pointed to key locations in the Czech Republic. In partnership with Anti-Slavery International, meetings were held with Czech stakeholders and this information was communicated to them. Czech NGOs were able to match some of this data to their information about where communities and individuals most at risk of trafficking commonly originated from. With small financial assistance from the British Embassy in Prague, the Czech NGOs and government agencies were able to enhance and better target prevention activities with at-risk communities. At the end of 2012 and in the first half of 2013, the Czech Republic is no longer among the top ten countries of origin.

In January 2013, a campaign was run by Crimestoppers UK, supported by the UK Human Trafficking Centre. This was the first campaign dedicated to raising awareness about trafficking for forced labour. However, it only focused on adults trafficked for forced labour and did not cover domestic servitude as a form of trafficking for forced labour. No evaluation of the campaign has been published to date.

In January 2013 three civil society organisations (NSPCC, Eaves and Stop the Traffic) were awarded a grant<sup>111</sup> of £75,000 total to provide a trafficking awareness-raising training to front-line professionals (local authorities, police, social workers, civil society organisations, health professionals etc.) to be delivered in the first quarter of 2013. As of May 2013, the NGOs that were awarded the grants were undertaking evaluation of the trainings. Outsourcing capacity and knowledge building to organisations with a proven track record of expertise on the issues and experience in training delivery is a positive example of partnership between the Government and civil society organisations.

In June, in response to a parliamentary question, the Minister for Immigration disclosed how much the government had spent on prevention activities in the past 5 years:<sup>112</sup>

#### 2009

Blue Blindfold Campaign Launch	£
15,000.00	

#### 2012

Redistribution of Awareness & Education Toolkit 'Internal Trafficking'	£ 5,500.00
Contribution to the Mayor's Office Evaluation on the Multi-Agency Activities for the 2012 Olympics and Paralympics	£ 4,000.00
National Campaign on Labour Trafficking conducted by Crimestoppers	£ 30,000.00

#### 2013

Funding for NSPCC for awareness-raising activities for front-line professionals	£ 10,000.00
Funding for Eaves for awareness-raising activities for frontline professionals	£ 43,762.00
Funding for Stop the Traffic for awareness-raising activities for front-line professionals	£ 20,512.00
Conference on Human Trafficking and UK Industry held on 18 March 2013	£ 18,353.34
Redraft and Reprint of the Police Operational Handbook	£ 4,669.26

## **5.1 Safe Return**

The 2010 ATMG report 'Wrong Kind of Victim?' recommended that the Government develop capacity to carry out individualised risk assessments when a trafficking victim (adult or child) returns to their home country. Risk assessments that examine a trafficked person's individual circumstances are important in reducing the risk of future victimisation and improving the chances of successful re-integration in the country of origin. At the time of writing there are still no minimum standards for safe return in the NRM.

<sup>111</sup> No such funding was made available in Scotland.

<sup>112</sup> Hansard Source, HC Deb, 25 June 2013, c170W

Article 16 of the Convention requires that States not only adhere to the principle of *non-refoulement* (so that a person is not returned to a situation where they might be harmed) but also take steps to connect a returning trafficked person to support structures in their home countries.

In practice, where personal links have been developed between an organisation in a country of origin and an organisation in the UK, some contact is usually established before a trafficked person returns to the country of origin. However, this is not systematic and is not guided by any agreed standards to ensure the quality and safety of the return. A service provider in one of the most important countries of origin for trafficking victims in the UK reported that usually there is very little information provided about a person returning from the UK and that the information that is shared does not constitute a risk assessment.

Some service providers both in the UK and in countries of origin spoke about the fact that the pressure to move trafficking victims on after 45 days leaves little time to carry out adequate risk assessments.

Currently it appears that risk considerations in cases of mandatory (or voluntary) repatriation of trafficked persons are made in a similar way to asylum cases. However this fails to take into account the different kinds of risk faced by trafficking victims. It has been suggested that embassies in countries of origin assist in the process of return and the conduct of risk assessments. Embassies can issue temporary travel documents, arrange new passports and give general information as well as provide contact details for possible NGOs that can provide assistance to returning victims. But comprehensive assessments of the risks that a particular individual would face on return to their country of origin would go beyond the normal capacity and function of an embassy.

The UN Office on Drugs and Crime offers guidance on what should be taken into account in conducting a risk assessment including:

“...factors such as the risk of reprisals by the trafficking network against the victim and his or her family, the capacity and willingness of the authorities in the country of origin to protect the victims and his or her family from possible intimidation or violence, the social position of the victim on return, the risk of the victim being arrested, detained or prosecuted by the authorities in his or her home country for trafficking related offences, the availability of assistance and opportunities for long term employment. Non-governmental organisations and other service organisations working with victims of trafficking should have the rights to submit information on these aspects, which should be taken into account in any decision about the return or deportation of victims by the competent authorities”.

A model for trans-national referral mechanism (TRM) has been developed with input from a number of European countries. The model takes the NRM across borders, making referrals between countries of origin and destination easier with specific standards for a safe and dignified return. The TRM concept has been tested in a number of European countries and endorsed by the European Commission.

An NGO service provider in Austria also published guidance in 2011 on safe return that details considerations for risk assessments. It recommends:

### **Multi-agency Involvement**

Stakeholders to be involved/consulted for risk assessment should include victims (facilitated by service providers); government agencies in the country of origin (contact via counterparts in country of destination); local NGOs in the country of origin (contact via NGOs in destination country)

### **Considering the History of the Trafficked Person**

Risks connected to a trafficked person's history include: family environment, circumstances in the country of origin, risks connected to the trafficking process and perpetrators, risks of stigmatisation, living conditions and employment prospects

### **Researching additional information sources**

Including consulting independent sources on the country of origin; information from international organisations, government agencies of the country of origin and local NGOs

### **Developing a safe return plan**

Taking into account safe return options, counselling availability, treatment, shelter and links with other services needed for re-integration of a trafficked person. Plans should be devised in collaboration between agencies in the countries of origin and destination.

In 2010, the International Organisation for Migration reported that trafficked persons are frequently re-trafficked within two years or less of having exited a trafficking situation, with estimates of re-trafficking ranging from 3 to 34%. The Poppy Project has reported in the past that 21% of the women they assisted were re-trafficked. There are no current estimates or statistics available for re-trafficking in the UK. However, it is reported that service providers do encounter victims that have been re-trafficked. A case of a victim who was re-trafficked a year after being referred to the NRM was presented at a Ministry of Justice and Salvation Army conference in November 2012. The service provider believed that the reason for the re-trafficking was because the victim had been returned to the country of origin too soon, there being no legal basis for the person to remain in the UK.

If a safe return enhances reintegration and abates the risk of re-trafficking, then the investments made to conduct proper risk assessments will be considerably smaller than the cost of repeated service provision for re-trafficked victims or police investigations. At the same time the preference for a voluntary return, as required under article 16 Convention, needs to be emphasised as does its importance in achieving successful reintegration. Some commentators have argued that repatriation (return) can only be called voluntary where people have a legal basis for remaining in a third country and have made an informed choice and consented to repatriate. By that token, if the only option left for a trafficked person that no longer has a legal basis to remain in the UK is to return to their country of origin not only is the return de facto mandatory repatriation, which is to be avoided under the Convention, but the risk of failed reintegration and re-trafficking increase.

## 6. Prosecution of Traffickers – an update

In its report 'In the Dock' ATMG examined the effectiveness of trafficking investigations and prosecutions in the UK. Of particular concern it found:

1. Human trafficking is not a policing priority despite the Government's commitment to make the UK a hostile environment for traffickers.
2. Despite the steady increase in the number of potential trafficked persons identified, the number of traffickers punished for trafficking offences has decreased.
3. In comparison, evidence suggests that many trafficked persons are prosecuted for crimes they were compelled to commit while their traffickers enjoy impunity.
4. The current anti-trafficking legislation that is scattered across three different Acts is unclear and often difficult to apply.

Since the publication of its report, the ATMG was pleased to note the announcement by the Home Secretary at the end of August that she will introduce a single Anti-Slavery Act. The ATMG, supported by a number of police officers and legal professionals has called for a consolidated law in the form of a single act covering human trafficking and other forms of contemporary slavery offences.

The ATMG stresses the importance of the single act to not only include the offences, but also provisions on victim protection, including compensation and non-criminalisation, following the requirements of the Convention and the EU Directive.

According to the UKHTC, the number of referrals of potential victims in the first half of 2013 has risen by 48%. However, the ATMG pointed out in the report *In the Dock* that the increase in referrals is not matched with a rising number of convictions of traffickers.

In 2012, a total of 13 convictions<sup>113</sup> for human trafficking and forced labour were recorded on a principal offence basis in England and Wales:<sup>114</sup>

Offenders found guilty at all courts of human trafficking offences, England and Wales, 2012 <sup>(1, 2)</sup>	
Offence	Number
Arrange/facilitate arrival into the <b>UK</b> of a person for sexual exploitation trafficking)	7
Arrange/facilitate travel within the UK of a person for sexual exploitation (trafficking)	3
Arrange/facilitate the departure from the UK of a person for sexual exploitation (trafficking) <sup>(</sup>	—
Trafficking persons into the UK for the purpose of exploitation	2
Trafficking persons within the UK for the purpose of exploitation	—
Trafficking persons out of the UK for the purpose of exploitation	—
Knowingly holding a person in slavery or servitude	1

In May 2013, the UK Court of Criminal Appeal heard four cases considering the non-punishment of trafficked persons. Three of these were Vietnamese trafficked children forced to work in cannabis farms and convicted for cannabis cultivation and the fourth was a Ugandan woman trafficked for sexual exploitation, prosecuted on the charge of using a false passport. The Court quashed all four convictions, recognising the importance of the non-punishment provisions enshrined in Article 8 of the EU Trafficking Directive (2011/36). The judgement confirmed that in situations where the criminal offence on which the victim of trafficking is charged is a manifestation of their exploitation, then the prosecution should be stopped.<sup>115</sup> It noted that it is the Court's role to stand between the prosecution and trafficked person i.e. the prosecution will be stayed if the Court disagrees with the decision to

<sup>113</sup> There is no specific offence of child trafficking. These figures include both children and adults. However, no breakdown as to the age of offenders is available.

<sup>114</sup> HC Deb, 2 September 2013, c168W

<sup>115</sup> *R v L and Others* [2013] EWCA Crim 991 (Judgment of 21 June 2013). Available at: <http://www.bailii.org/ew/cases/EWCA/Crim/2013/991.html> [Last accessed 30th August 2013]



prosecute.<sup>116</sup> This landmark judgment sets an important precedent to ensure that trafficked persons are protected from criminalisation, and highlights the importance of investigating the traffickers in these cases. The CPS is currently revising its guidance on prosecutions where the individual may be a victim of trafficking, as a result of this judgement.<sup>117</sup>

Despite these developments, there are continuing reports in the media about convictions of Vietnamese nationals for cannabis cultivation. Many of these reports include citations from judges and prosecutors that point to trafficking indicators.

*In the Dock* recognised that it is not just the CPS, but a number of other law enforcement agencies that need to put in place guidance on dealing with offenders who might be victims of trafficking. In addition to the CPS, ACPO is developing further guidance in this area.

Service providers who run prison outreach services, such as the Poppy Project, have reported an increase of victims of trafficking identified in prisons. Furthermore, the UKHTC baseline assessment published in August 2013 identified an increase in referrals of potential victims of forced criminal activities. Evidence points to an upward trajectory in this form of trafficking. Given the history of the criminalisation of victims and the negligible number of prosecutions of traffickers for forcing others into criminal activities, it is unlikely that this trend will change any time soon. Hence, the new guidance and its implementation will be instrumental in achieving change and it will be crucial that the new modern day slavery act makes reference to the non-criminalisation principle of the Convention and the EU Directive.

The ATMG was pleased to note positive developments in policing on the local level. In Kent police have developed and launched standard operating procedures on investigating human trafficking. The comprehensive document refers to the UK's obligations under the Convention, refers to the relevant legislation and covers victim protection and safeguarding as well as tips and guidance in terms of evidence gathering and crime scene treatment. The SOP covers all forms of trafficking.

Given the short period of time between publication of this report and the previous report *In the Dock*, the ATMG wishes to recall its previous recommendations.

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<sup>116</sup> See *supra* note 63, paragraph 17

<sup>117</sup> CPS, *supra* note 57

## 7. Child trafficking

Child trafficking is a significant problem in the UK. Both British and foreign children are trafficked to, within and from the UK. According to the UKHTC baseline assessment published in August 2013, the number of children identified as victims of trafficking in the UK has increased for the second year in a row. In 2012 alone, there was a 12% increase in the number of children identified as potential victims of trafficking for the purposes of exploitation, a total of 549.

Further data available for the period between April 2009 and December 2012 of children referred to the NRM show that children from Nigeria and Vietnam remain a significant at risk group:<sup>118</sup>

	2009*	2010	2011	2012	Total
Vietnamese	34	49	61	96	240
Nigerian	12	29	25	67	133
Chinese	21	15	10	20	66

In setting up the NRM, the Government decided to bypass the existing child protection system and local authority children's services were not given the task of identifying child victims of trafficking, despite their expertise in child protection and their statutory duty to safeguard children. Instead, practitioners are required to refer cases to the NRM case-owners within the Competent Authorities. Many professionals believe the CAs have insufficient expertise and training in relation to children<sup>119</sup>.

In addition, ECPAT UK has learned 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 referring the child may have a detrimental impact on a child's immigration status if the child receives a negative NRM decision. Unlike for adults, a child's consent is not required for referral into the NRM, as is the case for child protection issues, however, it would be best practice to discuss any decision to do so with the child where appropriate.

New guidance for child First Responders<sup>120</sup> in the NRM acknowledges that while the NRM is not mandatory for children, "there are clear benefits in referring for both the child and the Local Authority". It claims a referral can help ensure "a focused and appropriate response", as well as encouraging "joint multi-agency working approach" to assist in the overall protection of the child. Yet practitioners and NRM forms seen by the ATMG reveal that this is not always the case, with children's referrals often lacking detail and information, as well as a distinct lack of information sharing between key agencies, including police, local authorities, health and the Home Office.

Child trafficking is child abuse and so a child welfare response is required in tandem with any referral into the NRM. Despite the Government's safeguarding guidance<sup>121</sup>, practitioners report that this is not always the case and that child trafficking is seen primarily as an immigration issue and not one of child protection. NGOs report that, on occasion, local authorities have refused to support a suspected victim of trafficking until the Home Office has intervened. This immigration focus, coupled with a lack of awareness of the NRM, has led to safeguarding failures in many child cases.

The London Trafficking Toolkit and Practice Guidance, developed by the London Local Safeguarding Children Board, as well as other similar toolkits rolled out in the UK, have been positive in raising awareness of the NRM and trafficking, but there continues to be reluctance among local authorities to use the NRM and to train staff on the specific issue of child trafficking.

From its inception on 1 April 2009 to 30 June 2011, there were 438 child referrals into the NRM from 49 different nationalities. When looking at the countries of origin of the child victims in this period, there are clear disparities among positive CG decisions across nationalities, with British victims, and

<sup>118</sup> HL Deb, 22 April 2013, c384W

<sup>119</sup> ATMG, Wrong Kind of Victim? (2010)

<sup>120</sup> Home Office: National Referral Mechanism: guidance for child first responders (August 2013), available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/244697/NRM\\_First\\_Responder\\_Guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/244697/NRM_First_Responder_Guidance.pdf)

<sup>121</sup> HM Government: Safeguarding children who may have been trafficked, 2011

to a lesser extent, Eastern European victims, getting higher rates of CG decisions than non-EU nationals:

Victim country of origin	Rate of Conclusive Ground decision
Britain	88%
Romania	68%
Nigeria	32%
Vietnam	24%
China	17%

More research needs to be done to understand the variation in these CG rates. Like in the cases of adult victims from outside of the EU, this raises a question whether the NRM system might be applying different standards based on the nationality. Considering the percentage of positive decisions in cases of non-EU and EU citizens one must ask where does that leave the Convention requirement of equality.

The higher number of recorded cases may indicate improvements by the UK authorities to identify potential child victims of trafficking. However, at the same time some UK charities, such as ECPAT UK warn that it is also indicative of the “Government’s continued failure to make the UK a safe place for children”

One of the significant shortcomings identified by the ATMG in 2010 in relation to child trafficking was the lack of safe accommodation for children that are suspected or known to have been trafficked. The lack of commonly agreed safety and protection standards led to inconsistency, which in turn means that safeguarding issues and the best interests of the child were not at the centre of services for children, leading to potentially further harm to the child. This continues to be a problem in 2013. Professionals report that many children that have been identified as trafficked or at risk of trafficking go missing from care. In several cases, it has later transpired that a child that went missing from care was found in a trafficking situation.

The ATMG has learned from police officers, that traffickers have sophisticated knowledge of the child protection system in the UK. Cases have been reported of children abandoned by their traffickers in transit at the airport in the UK. A child is then placed in the local authority care and contacted again by the trafficker who is aware exactly where the child is accommodated.

In 2010, the key recommendations that the ATMG found in relation to the NRM included:

- The need to restructure the NRM for children and give the authority to make both the reasonable and the conclusive grounds decision to the services responsible for child protection based in local authorities.
- Issue a reminder to First Responders and Competent Authorities that under 18's are entitled to special measures.
- Introduce a system of legal guardians with explicit responsibility for representing a child's best interest.

These recommendations remain valid in 2013.

## 8. Devolved Administrations

Devolved administrations have legislative competence for a number of policy areas integral to anti-trafficking, in particular in the field of criminal justice, child protection and healthcare. However, other matters that impact significantly on anti-trafficking, such as asylum and immigration are reserved for the legislative competence of the UK Parliament.

Ministers from devolved administrations participate in the Inter-Departmental Ministerial group chaired by the Home Office Minister for Immigration, currently Mark Harper. Representatives of all three administrations also attend the Home Office led multi-stakeholder Joint-Strategic Group on Human Trafficking.

### 8.1 Northern Ireland

Since the publication of the report *Wrong Kind of Victim?* in 2010, there has been a number of developments in Northern Ireland. The Department of Justice (DoJ) continues to coordinate the anti-trafficking response in Northern Ireland with the Department of Health, Social Services and Public Safety (DHSSPSNI) as lead department on child trafficking. Since 2010, NGO First Responders have been designated. Migrant Help acts as a First Responder for adults. Furthermore, the NSPCC CTAC operates its advice line on child trafficking in Northern Ireland on the basis of an MoU with the Health and Social Care Board and the Police Service Northern Ireland.

In 2012 the DoJ established a dedicated Human Trafficking Team, whose purpose is to provide strategic direction, policy development, facilitate coordination and cooperation with other jurisdictions and relevant statutory and civil society organisations.

Guidance has also been issued for working with victims of trafficking. In February 2011, the DHSSPSNI Ireland issued guidance for the welfare and safeguarding of child victims of trafficking.<sup>122</sup> In October 2012, the DoJ and DHSSPSNI guidance on welfare and protection of adult victims of trafficking was published.<sup>123</sup> Despite the existence of the guidance, like in the rest of the UK, the practical implementation of the guidance across various health trusts and the monitoring of this is an issue to be addressed.

#### 8.1.1 Legislative Developments

The report *In the Dock*, published in June 2013 identified on-going concerns, in particular with the investigation and identification of trafficking cases. In 2012, Northern Ireland noticed a sharp decrease in the number of potential victims referred to the NRM. Between April 2012 and 31.1.2013, only 8 referrals were made in Northern Ireland.

In June 2013, the ATMG expressed concern that there had been only two convictions for trafficking in Northern Ireland. In September 2013, it was pleased to learn that further two trafficking cases were before the courts.

In 2012, an all-party group on human trafficking was set up in the Northern Ireland Assembly. The secretariat of the group is provided by Amnesty International Northern Ireland's office. In addition, in October 2012 the Minister of Justice established an Engagement Group on human trafficking to facilitate better partnership working between the Department and civil society organisations in Northern Ireland. The Group meets regularly and has established three sub-groups focusing on education, raising awareness and training. In partnership with the Engagement Group, a multi-media educational resource pack on human trafficking has been produced and is available free of charge to schools across Northern Ireland. Further work with schools is planned through a series of events to mark EU Anti-Trafficking Day 2013. DOJ have also participated in a number of community-based events – such as Belfast Film Festival and community ‘think tanks’ in order to inform and raise awareness of the issue of human trafficking.

<sup>122</sup>[http://www.dhsspsni.gov.uk/oss\\_working\\_arrangements\\_for\\_the\\_welfare\\_safeguarding\\_of\\_child\\_victims\\_of\\_human\\_trafficking.pdf](http://www.dhsspsni.gov.uk/oss_working_arrangements_for_the_welfare_safeguarding_of_child_victims_of_human_trafficking.pdf)

<sup>123</sup><http://www.dojni.gov.uk/index/publications/publication-categories/pubs-policing-community-safety/working-arrangements-for-the-welfare-protection-of-adult-victims-of-human-trafficking-oct-2012.pdf>

In April 2013, the Criminal Justice Bill was passed by the NI Assembly to bring the legislation in line with the EU trafficking directive. The Bill introduces extraterritorial jurisdiction allowing for prosecution of a UK national or a habitual resident of Northern Ireland who traffics another person anywhere outside of the UK. It also makes internal trafficking for non-sexual exploitation a criminal offence.

Also, in June 2013, Lord Morrow introduced a Human Trafficking and Exploitation Bill in the NI Assembly. The proposed bill seeks to enhance support services for victims. However, concerns have been raised that this bill does not address all forms of exploitation, despite research by the Joseph Rowntree Foundation in 2011 revealing forced labour as a problem in Northern Ireland<sup>124</sup>. Concerns have also been raised that a clause in the Lord Morrow bill to outlaw the purchase of sexual services of a prostitute risks diverting resources, including criminal justice resources, away from tackling trafficking.

In September 2013, the Minister of Justice David Ford announced his plans to extend the time limit in which those who use the services of a trafficked prostitute/woman subject to a force can be prosecuted.

### **8.1.2 Policy Developments**

The DoJ has also published the first Northern Ireland Human Trafficking Action Plan<sup>125</sup> for 2013-14, which identifies priority actions for the Department and its partners.

The Immigration and Human Trafficking Subgroup of the Organised Crime Task Force (OCTF) continues to bring together the DoJ with other relevant Departments and statutory bodies, including the Police Service of Northern Ireland (PSNI), the Public Prosecution Service for Northern Ireland (PPSNI), the Northern Ireland Health and Social Care Board (HSCB), Home Office, UK Human Trafficking Centre (UKHTC), Gangmasters Licensing Authority (GLA) and the Department of Employment and Learning (DEL) in order to share intelligence and best practice and provide a co-ordinated, joined-up response to human trafficking. From October 2013, the newly established National Crime Agency has also been represented on the OCTF.

Through the 2013-14 Human Trafficking Action Plan the DoJ and OCTF have identified training and awareness – both of frontline staff and of civil society organisations – as a priority. Responsibility for delivery of training on issues relating to human trafficking in NI rests with the individual agencies and law enforcement bodies, however through the OCTF immigration and human trafficking subgroup, the DOJ has taken on a coordinating role.

PSNI has developed and rolled out e-training to almost 4000 of its officers and has also developed an Operational Field Guide which was launched on 18 October 2013 and has been issued to all officers. PSNI has also participated in specific training on human trafficking with An Garda Síochána – the police service in the Republic of Ireland.

The Health and Social Care Board developed practical advice for staff in Emergency Departments which covers human trafficking, domestic violence and abuse of adults and which sets out information in relation to contact points and the Board's expectations of staff when responding to these issues.

Since July of 2013 DoJ and the OCTF have begun working with the PSNI to identify and meet the training needs of new recruits and existing officers. Furthermore, in September 2013 the Minister of Justice launched an information leaflet for potential victims of trafficking. It outlines what help is available and where to find it. It has been translated into eight languages, reflecting the languages spoken by victims of trafficking who have been identified in Northern Ireland.<sup>126</sup> Unfortunately, the quality of translation of some of the language versions is poor. The Czech leaflet for example uses only female word endings and hence addresses only potential female victims of trafficking. Furthermore, some of the words and sentences are incorrect in Czech, resulting in unclear messaging.

<sup>124</sup> <http://www.jrf.org.uk/publications/forced-labour-northern-ireland-exploiting-vulnerability>

<sup>125</sup> <http://www.octf.gov.uk/Publications/Human-Trafficking/Annual-Human-Trafficking-Action-Plan-2013-14.aspx>

<sup>126</sup> <http://www.dojni.gov.uk/multi-lingual-leaflet-for-victims-of-human-trafficking.htm>.

### **8.1.3 Prosecution and investigation**

The DoJ has stated that PSNI continues to consider implementation of Joint Investigation Teams (JITs) with other European Member States including one recent JIT with counterparts in Swedish law enforcement organisations.

The ATMG understands that at the time of going into print of this report, the PSNI was going to formally launch Operation Eagle in Northern Ireland on 18 October 2013. This will aid the PSNI's response to human trafficking and organised immigration crime. A flagging system to identify intelligence related to trafficking under Operation Eagle on the Police National Database has also been introduced. This means data can be searched more efficiently locally as well as nationally. It is thought that greater intelligence join up will support coordination and cooperation between forces.

In October 2013 the Public Prosecution Service in Northern Ireland launched its policy on Prosecuting Cases of Human Trafficking to provide further guidance on prosecuting human trafficking offences. The publication of this followed a period of consultation with statutory and non-statutory (including NGO) groups

### **8.1.4 Support for Trafficked Persons**

The DoJ funds a support package for adult potential victims of human trafficking during the 45 day Recovery and Reflection period of the NRM process. This support package includes: safe and appropriate single room accommodation; day to day living/travel costs in compliance with the Directive; information in a language they can understand and help to access interpretation/translation services if required; help to access emergency and non-emergency health care or help to access counselling or other therapeutic services, where necessary; help to access appropriate services; and sign-posting to justice, compensation, immigration and independent legal advice and legal representation. Support provided may be extended beyond 45 days on a case by case basis.

Migrant Help and its delivery partner Women's Aid, currently holds the contract to deliver this package of support measures. The current contract will expire on 31 January 2014 and tendering exercise is underway to ensure that a new contract is in place from 1 February 2014.

The Minister of Justice has signalled his intention to bring forward secondary legislation which would put support for adult potential victims on a statutory basis; clarify that all victims of human trafficking were automatically eligible to apply for special measures in court; and place a statutory requirement on police to minimise the risk of secondary victimisation during police interviews. However, work to progress these measures is currently suspended, pending the outcome of a Private Member's Bill, which seeks to make similar provisions and is currently before the Assembly.

As of October 2013 the Compensation Service is aware of eight claims that have been made relating to human trafficking cases. Two of these have been granted, resulting in payments totalling £52,500. Decisions are still pending in the remaining six cases.

### **8.1.5 Child trafficking**

The number of children identified and referred into the NRM in Northern Ireland remains low – in 2012, only one child was referred to the NRM<sup>127</sup>.

A regional group comprising of the main statutory agencies and chaired by the HSCB commenced in November 2012 with a key focus on the development of operational practice guidance for staff on separated / trafficked children. The document will be completed and issued in autumn 2013.

The Health and Social Care Board (HSCB) introduced quarterly reporting measures on separated / trafficked children across HSC Trusts from April 2012. This provides the HSCB on a quarterly basis with up-to-date data on separated children who present in Northern Ireland, the number where trafficking is suspected or trafficked, and the number of children who are looked after, placement type.

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<sup>127</sup> National Referral Mechanism Statistic quarterly reports by the UKHTC accessed at [www.soca.gov.uk](http://www.soca.gov.uk)

Refugee Council delivered Age Assessment training across the five HSC Trusts in October 2012 for 20 social workers across the region to develop skills and competencies in this area of work with separated / trafficked children.

### 8.1.6 Recommendations

In 2010, the ATMG recommended the following key changes in Northern Ireland. Update on the developments is included in Annex II:

- The establishment of a localised National Referral Mechanism in Northern Ireland and a local infrastructure of support in accordance with the obligations of the Convention.
- The development of documentation available in different languages for statutory and non-statutory agencies to provide to presumed trafficked persons in Northern Ireland.
- The Public Prosecution Service should provide guidance on human trafficking for all prosecutors in Northern Ireland in order to improve the level of convictions in Northern Ireland. It should also provide guidance on the non-criminalisation of trafficked persons who may have committed offences during their trafficking, especially related to cannabis cultivation offences, immigration related and soliciting or procuring offences.
- The establishment of an information-sharing protocol across devolved and non-devolved government departments in order to collect and publish relevant data on the extent of human trafficking in Northern Ireland, the number of persons identified as presumed trafficked persons (initially and also as a result of both 'reasonable grounds' and conclusive decisions) and the number of traffickers.

## 8.2 Scotland

Since the publication of the report *Wrong Kind of Victim?* in 2010, there has been a number of developments in Scotland. Of particular significance was the creation of a unified police force across the whole of Scotland, 'Police Scotland', launched in April 2013. There is a specialised anti-trafficking unit in the force which might place Scotland in an advantageous position in terms of its ability to combat the crime across the whole country. In the first months of its existence, service providers have reported improved channels of communication and cooperation. It is hoped that this reorganisation will bring about an increase in prosecutions and convictions for trafficking.

The ATMG report *In the Dock* of June 2013 pointed out the low number of convictions in Scotland, only three as compared to 285 victims who had been referred to the NRM between 2010 to 2012 (95 in 2010, 94 in 2011 and 96 in 2012).<sup>128</sup>

The most recent data obtained from COPFS indicates a slight improvement in the conviction rates as can be seen from the table below:

#### Number of Human Trafficking convictions in Scotland – by accused, by year reported to COPFS<sup>129</sup>

Year	Trafficking for prostitution	Trafficking for other exploitative purposes	Total
2010	2	-	2
2011	-	-	
2012	1	3	4
Total	3	3	6

In June 2013, a Criminal Justice Bill Scotland has been introduced in the Scottish Parliament, creating a statutory aggravation offence of human trafficking. The Bill will be further debated in the Parliament in the autumn.

<sup>128</sup> HC Deb, 25 June 2013, c176

<sup>129</sup> COPFS is not the official record keeper of conviction data but the following has been compiled from our records according to the year the case is reported to COPFS by the police. As such there will be some cases still ongoing so these numbers may change (in terms of accused reported to us in 2012, proceedings remain ongoing against 3 individuals).

Following a human trafficking summit in October 2012, the Scottish government set up a progress group to take forward the tasks identified in the summit. The group is chaired by the Government and comprises representatives of statutory and non-governmental agencies. A number of sub-groups have also been established to drive forward the actions identified in the 2012 summit. The group met again in July 2013 to review the progress in advancing the tasks identified in 2012. Minutes of the meeting are available online.<sup>130</sup>

In July 2013, the Scottish Government also published leaflets designed to raise awareness of the general public about trafficking, providing indicators and information about where and how to report it. This is a positive step and should be evaluated for its impact.

The Equality and Human Rights Commission Scotland carried out an Inquiry into Human Trafficking in Scotland in 2011, led by Baroness Helena Kennedy. A Report of the Inquiry was published on 28th November 2011, with a follow-up report assessing the progress in 2013. Key findings of the report were that:

- “the legislation in Scotland and in the UK has developed in a piecemeal fashion and is not based on a thorough consideration of how legislation should best deal with the problem”<sup>131</sup>.
- “the original concern in the Inquiry that there was a conflict of interest in charging UKBA and SOCA with making decisions on whether someone is, or has been, a victim of trafficking, alongside discharging their respective primary functions of border control and tackling serious organised crime. There has been little uncovered by this update which would allay such concern”

In September 2013, Jenny Marra MSP introduced a proposal for a single anti-trafficking bill, proposing not only unification of the relevant offences, but also introduction of protection and assistance provisions, bringing Scots law in line with the EU Directive.

In 2010, the ATMG identified a number of recommendations for Scotland. A table assessing the progress in 2013 can be found in Annex II.

1. Establish an information-sharing protocol across devolved and non-devolved agencies in order to collect and publish relevant data on the extent of human trafficking in Scotland, especially for forms of exploitation other than commercial sexual exploitation, the number of persons identified as presumed trafficked persons and the number of traffickers arrested, charged and successfully prosecuted for trafficking and trafficking-related offences.
2. Develop effective intelligence-sharing protocols between relevant law enforcement agencies, such as local police forces, the Crown Office and Procurator Fiscal Service, the Scottish Crime and Drug Enforcement Agency and the Association of Chief Police Officers in Scotland, to improve the likelihood of securing convictions of traffickers under human trafficking legislation in Scotland.
3. Establish a localised multi-agency Scottish National Referral Mechanism and a local infrastructure of support in accordance with the obligations of the Convention.
4. Establish a Child Trafficking Group in Scotland, to include devolved and non-devolved, statutory and non-statutory agencies, in order to establish an integrated approach to child trafficking in the country, following the good practice examples already present in the country.
5. The Crown Office and Procurator Fiscal Service should publish guidance for all prosecutors in Scotland on the non-criminalisation of trafficked persons who may have committed offences during their trafficking, especially related to cannabis cultivation offences, immigration related and soliciting or procuring offences.
6. Develop better accommodation provision to effectively support 16- and 17-year-old trafficked children.
7. Ensure safe accommodation, support and service provision are available for trafficked persons in all parts of Scotland, both men and women.
8. Ensure appropriate provision of certain services for trafficked persons across Scotland, such as interpreting and counselling services.

<sup>130</sup> <http://www.scotland.gov.uk/Topics/Justice/crimes/humantraffick/humantraffick1>

<sup>131</sup> *Inquiry into Human Trafficking in Scotland, Follow-on Report*, Equality and Human Rights Commission, 2013, p.26



### 8.3 Wales

Since the publication of the report *Wrong Kind of Victim?* in 2010, there have been a number of developments in Wales. The developments have been bolstered by the appointment of an Anti Human Trafficking Coordinator (AHTC) to make Wales a hostile place for human trafficking to exist and to co-ordinate the best possible support for victims. Wales remains the only nation in the UK which has a coordinator in place.

The AHTC has enhanced co-ordination of initiatives to tackle human trafficking by forming a leadership group which brings together representatives from key agencies (Police, Health, Education, Social Services, CPS and the third sector). Information is provided to agencies of the scale, types and location of human trafficking in Wales which has improved the sharing of intelligence and recording of incidents using the National Referral Mechanism (NRM) and cases within the Criminal Justice System. However, there are still very low numbers of referrals to the NRM from Wales (34 in 2012) and the AHTC is working with partners to develop a better 'evidence base' which reflects the level of human trafficking. More recently, Welsh government has committed to establishing the post of Regional Anti Human trafficking Co-ordinators across Wales. The Regional coordinators will ensure that the breadth of Wales is covered.

In 2010 Government funded a project to provide accommodation and support for women who have been trafficked in North Wales. The project allows for three women to be accommodated at any given time.

In 2012, two anti- trafficking fora were established in Wales. The Wales third sector NGO forum was set up following a round table on human trafficking which aimed to enable strategic leads across the public sector in Wales, to build understanding about Human Trafficking and examine how best to implement safeguarding responsibilities to protect people who have been trafficked in Wales<sup>132</sup>. A Multi-Agency Anti-Human Trafficking Forum was established in Cardiff in summer 2012 to facilitate and develop integrated working arrangement focusing on victim identification and support as well as prevention of human trafficking. To date the forum has established a Multi-Agency Human Trafficking Response Task Group and developed a localised Response Pathway. The forum has also developed a human trafficking dissemination and training strategy which took effect in July 2013 by rolling out a series of Master Classes for practitioners.

Bawso and New Pathways were designated as first responders in 2012.

Regional anti human trafficking forums are being set up across Wales similar to Gwent Consultation Group on Human Trafficking which was set up in 2010. The Gwent consultation group on human trafficking has been cited as a good practice example of partnership working in an effort to combat human trafficking.

Although a lot of work has taken place since the first ATMG report. Most of the recommendations<sup>133</sup> set out in the report still apply today.

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<sup>132</sup> Roundtable report can be accessed on:

<http://www.medaille.co.uk/The%20Challenges%20of%20Human%20Trafficking%20in%20Wales%202012.pdf>

<sup>133</sup> see [http://www.antislavery.org/includes/documents/cm\\_docs/2010/a/1\\_atmg\\_report\\_for\\_web.pdf](http://www.antislavery.org/includes/documents/cm_docs/2010/a/1_atmg_report_for_web.pdf), p.145

## 9. Conclusion

The ATMG found a number of improvements in anti-trafficking efforts. In the area of prevention, new targeted investments were made into training and awareness raising. Data collection has also seen some improvements and the ATMG was pleased to see that several of its recommendations have been taken up by the UKHTC.

Devolved administrations have also showed progress, for example by establishing a special coordinator role in Wales or cross party groups in the parliaments in Scotland and Northern Ireland.

However, overall progress has been slow and significant improvements in the assistance to victims are yet to be seen. In particular the lack of an appeals process within the NRM and the strong evidence indicating a bias in decision making leads to a conclusion that basic principles of rule of law, as articulated by Lord Bingham<sup>134</sup> in 2010, are being flouted. Specifically it can be concluded that the adjudicative procedures of the state established by the NRM are not fair, with the bias towards EU/EEA citizens suggesting that the law of the land is not being applied equally to all and that NRM decisions are based on discretion of officials.

The challenge remains to ensure that all the UK's obligations are met under the Council of Europe Convention and the EU Directive to adequately legislate, investigate the crime, punish the perpetrators and protect the victims and to apply the human-rights approach and non-discrimination.

The evidence presented in previous research by the ATMG (*Wrong kind of victim?* 2010 and *All Change*, 2012) led to the conclusion the UK has misunderstood key provisions of the Council of Europe Trafficking Convention and that the NRM is a flawed system that seems to be treating potential trafficked persons from outside of the EU differently to UK and EU nationals.

In 2013, this is still the case. Hence, many of the original recommendations made by the ATMG in 2010 remain (see Annex II.)

The announcement by the Home Secretary in August 2013 that she will introduce a single anti-slavery act and establish an anti-slavery commissioner is a potential opportunity to achieve significant improvements in the anti-trafficking field.

For any new law to achieve major change, it will have to include provisions that put the NRM on a statutory footing, ensuring that it abides by basic principles of rule of law, and codify protection and assistance to trafficked persons in addition to clarifying the offences related to trafficking and modern day slavery. Equally, the post of a Commissioner will have to be enshrined in the law, given statutory powers to request information and data from government bodies and be directly accountable to Parliament.

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<sup>134</sup> Bingham, *The Rule of Law.*, Allen Lane, London 2010.

## Annex I Tables with NRM decision overview

The below tables show the contrasts in results of decisions in cases of UK and EU nationals and those from outside of the EU.

<b>Table of decisions UK nationals referred to the NRM April 2009-March 2013</b>			
Time period	Number referred to the NRM	<i>Positive</i> reasonable grounds decision	<i>Positive</i> conclusive grounds decision
Apr 2009-Jun 2011	60	57	53
Jul – Sept 2011	23	23	22
Oct – Dec 2011	6	6	5 <sup>135</sup>
Jan- Mar 2012	6	5	4 <sup>136</sup>
Apr – Jun 2012	10	10	9 <sup>137</sup>
Jul – Sept 2012	12	12	12
Oct – Dec 2012	6	6	6
Jan-Mar 2013	23	22	21

<b>Table of decisions Polish nationals referred to the NRM April 2009-March 2013</b>			
Time period	Number referred to the NRM	<i>Positive</i> reasonable grounds decision	<i>Positive</i> conclusive grounds decision
Apr 2009-Jun 2011	20	11	9 <sup>138</sup>
Jul – Sept 2011	8	8	7
Oct – Dec 2011	10	8	8
Jan- Mar 2012	15	15	15
Apr – Jun 2012	19	19	18
Jul – Sept 2012	11	11	11
Oct – Dec 2012	7	7	6
Jan-Mar 2013	41	41	34

<sup>135</sup> Consideration suspended in one case

<sup>136</sup> Conclusive decision not made yet in one case

<sup>137</sup> Consideration suspended in one case

<sup>138</sup> Consideration suspended in one case

<b>Table of decisions Nigerian nationals referred to the NRM April 2009-March 2013</b>			
<b>Time period</b>	<b>Number referred to the NRM</b>	<b>Positive reasonable grounds decision</b>	<b>Positive conclusive grounds decision</b>
Apr 2009-Jun 2011	298	140	55 <sup>139</sup>
Jul – Sept 2011	48	18	1 <sup>140</sup>
Oct – Dec 2011	37	16	5 <sup>141</sup>
Jan- Mar 2012	48	25 <sup>142</sup>	5
Apr – Jun 2012	52	24 <sup>143</sup>	7 <sup>144</sup>
Jul – Sept 2012	66	37 <sup>145</sup>	5 <sup>146</sup>
Oct – Dec 2012	44	21 <sup>147</sup>	3 <sup>148</sup>
Jan-Mar 2013	43	25	6 <sup>149</sup>

<b>Table of decisions Vietnamese nationals referred to the NRM April 2009-March 2013</b>			
<b>Time period</b>	<b>Number referred to the NRM</b>	<b>Positive reasonable grounds decision</b>	<b>Positive conclusive grounds decision</b>
Apr 2009-Jun 2011	160	106	34 <sup>150</sup>
Jul – Sept 2011	27	16	4 <sup>151</sup>
Oct – Dec 2011	24	17	5 <sup>152</sup>
Jan- Mar 2012	44	24	3 <sup>153</sup>
Apr – Jun 2012	27	18 <sup>154</sup>	4 <sup>155</sup>
Jul – Sept 2012	30	21 <sup>156</sup>	4 <sup>157</sup>
Oct-Dec 2012	34	25	2 <sup>158</sup>
Jan-Mar 2013	32	19	3 <sup>159</sup>

139 Decision suspended in 5 cases, not yet made in 44 cases

140 Conclusive decision not yet made in 11 cases and suspended in 1 case.

141 Conclusive decision not yet made in 10 cases and suspended in 1 case

142 Conclusive decision not yet made in 5 cases

143 Conclusive decision not yet made in 12 cases

144 Conclusive decision not yet made in 14 cases

145 Conclusive decision not yet made in 6 cases

146 Conclusive decision not yet made in 26 cases, 1 case withdrawn and suspended in 1 cases

147 Conclusive decision not yet made in 12 cases

148 Conclusive decision not yet made in 11 cases

149 Conclusive decision not yet made in 15 cases

150 Conclusive decision not yet made in 24 cases, suspended in 22 cases and withdrawn in 5

151 Conclusive decision not yet made in 10 cases

152 Conclusive decision not yet made in 8 cases and suspended in 3 cases

153 Conclusive decision not yet made in 11 cases and suspended in 4 cases

154 Decisions not yet made in 4 cases and suspended in 3 cases

155 Conclusive decision not yet made in 12 cases and withdrawn in 1 case

156 Conclusive decision not yet made in 7 cases

157 Conclusive decision not yet made in 16 cases

158 Conclusive decision not yet made in 16 cases and suspended in 3 cases

159 Conclusive decision not yet made in 11 cases and suspended in 1 case

## ANNEX II Recommendations

The table below is an overview of progress against recommendation by the ATMG in 2010

Recommendation 2010	Progress	Revised recommendation 2013 (if applicable)
<b>Short Term</b>		
Stop vetting the credibility of an individual's claims prior to making a 'reasonable grounds' decision.		The recommendation remains valid in 2013.
Instruct the police and UKBA not to question presumed trafficked persons during a reflection period		The recommendation remains valid in 2013.
Instruct the UKBA to put a temporary stop to any fast track immigration or asylum proceedings		The recommendation remains valid in 2013.
Develop guidance for First Responders on how to fill in referral forms		The recommendation remains valid in 2013.
Grant trafficked persons (notably migrants who have been subjected to forced labour or servitude) a suitable visa or residence permit to remain in the UK for the duration of legal proceedings when pursuing a claim for compensation	Some trafficked persons have been able to obtain visa for this purpose. No data is collected about the number of persons who have been able to obtain it.	Ensure that all trafficked persons are provided with legal advice to seek redress, including compensation.
Introduce a formal right of appeal for individuals who are the subject of negative decisions by a Competent Authority.	Some trafficked persons have been able to challenge decisions through informal routes or judicial review.	Introduce a formal right of appeal for individuals who are the subject of negative decisions by a Competent Authority.
Appoint a National Coordinator responsible for overseeing referral of all cases.	Anti-Trafficking Coordinator has been appointed in Wales to coordinate anti-trafficking efforts in that country.	Appoint a coordinator responsible for coordinating efforts across the UK.
Restructure the National Referral Mechanism for cases of children who may have been trafficked.		The recommendation remains valid in 2013.
Issue a reminder to First Responders and Competent Authorities that under 18's are entitled to special measures to protect children.		The recommendation remains valid in 2013.

Develop specific training for foster carers or managers of social services accommodation concerning children who are at a significant risk of going missing		The recommendation remains valid in 2013.
Review the interpretation of 'duress' in the cases of both adults and children (Northern Ireland)		
Intensify training for specific categories of professionals who are likely to be involved in considering or making decisions about a person who has been trafficked		The recommendation remains valid in 2013.
<b>Medium Term</b>		
<i>Reforming the structure and functions of a referral system</i>		
Put the responsibility for determining who it is 'reasonable' to suspect has been trafficked with the First Responders and other frontline organisations.		The recommendation remains valid in 2013.
Increase the number of organisations which currently have the status of First Responders	The number of First Responders has increased. There are currently 18 statutory and civil society organisations that act as first responders.	
Introduce coordinated referral systems for trafficked persons at local level		The recommendation remains valid in 2013.
Consider creating local level multi-agency panels responsible for protection and services		The recommendation remains valid in 2013.
Establish at national level the standards required for the delivery of protection and assistance at local level		The recommendation remains valid in 2013.
Develop a procedure which allows central government agencies to determine requirements of longer term protection or presence (in the UK) needed for cooperation with law enforcement.		The recommendation remains valid in 2013.
Develop the capacity to carry out <i>individualised</i> risk		The recommendation remains valid in 2013.

assessments when a presumed trafficked person (adult or child) may return to their home country,		
<b>Provisions of the law</b>		
Ensure the police and prosecutors investigate the possibility that migrants suspected of committing offences may have been trafficked	Pursuant to a judgement in the Court of Criminal appeal the CPS and ACPO guidance is currently being revised.	
<b>Children</b>		
Introduce a system of legal guardians with explicit responsibility for representing a child's best interests.		The recommendation remains valid in 2013.
Give guidance on cases in which the stated age of a young person who is a presumed trafficked person is disputed to the agencies responsible for such young people.		The recommendation remains valid in 2013.
<b>Monitoring and Evaluation</b>		
Appoint an Anti-Trafficking Watchdog with the authority to access all information required to independently monitor the implementation of the Convention	The Inter Departmental Ministerial Group (IDMG) on Human Trafficking fulfils role of the mechanism equivalent to the National Rapporteur. In August 2013 the Home Secretary announced that she will introduce an Anti-Slavery Commissioner.	Introduce the UK Anti-Slavery Commissioner through a clause in the Anti-Slavery Bill with powers to independently monitor and assess measures adopted by the Government to tackle human trafficking, report annually to Parliament on the success of these strategies, and make recommendations for improvements. A Commissioner should be a body with the statutory authority to request information and commission studies to identify trends in human trafficking. The Commissioner would complement the co-ordination work of the IDMG in analysing and evaluating the effectiveness of the anti-trafficking strategies that it implements in the future.
Conduct independent evaluations of the impact of prevention activities	The <i>Blue Blindfold campaign</i> that was launched by UK Human Trafficking Centre in 2007 has now been discontinued and there are currently no plans to revive the	

	<p>campaign. The campaign impact has not been evaluated, save for the evaluation carried out by the Department of Justice in Northern Ireland.</p> <p>Between 2010-2013, several isolated prevention activities have been carried out with the support from some Government departments. Evaluations are available for some of the activities, others are pending or not available.</p> <p>Between 2011-2012, a series of awareness-raising and prevention activities were undertaken in London by the London 2012 Human Trafficking Network, a coalition of 59 organisations that was set up in 2009 to reduce the risk of trafficking in relation to the London Olympic games. The network was coordinated by statutory agencies in partnership with civil society organisations. The prevention-awareness raising activities of the Network included:</p> <p>An independent evaluation of the Network, to establish whether it was successful in meeting its objectives and in January 2013, a campaign was run by Crimestoppers UK, supported by the UK Human Trafficking Centre. This was the first campaign dedicated to raising awareness about trafficking for forced labour. No evaluation of the campaign has been published to date.</p> <p>In January 2013 three civil society organisations were awarded a grant of £75,000 total to provide a trafficking</p>	
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	awareness-raising training to front-line agencies to be delivered in the first quarter of 2013. As of May 2013, the NGOs that were awarded the grants were undertaking evaluation of the trainings.	
Assess whether legislation against human trafficking is fit for purpose and with a view to possibly amending it.	<p>In August 2013, the Home Secretary announced that she will introduce a consolidated Anti-Slavery Act.</p> <p>In June 2013, Lord Morrow introduced a Human Trafficking and Exploitation Bill in June 2013 in the Northern Ireland Assembly.</p> <p>In September 2013, Jenny Marra MSP introduced a proposal for a single anti-trafficking bill in Scotland to unify the relevant offences and introduce protection and assistance provisions for trafficked persons.</p>	A unified anti-slavery/anti-trafficking law must put the NRM on a statutory footing and codify provisions to protect trafficked persons in addition to unification of the trafficking offences.
<b>Recommendations for Scotland</b>		
Establish an information-sharing protocol across devolved and non-devolved agencies in order to collect and publish relevant data on the extent of human trafficking in Scotland, especially for forms of exploitation other than commercial sexual exploitation, the number of persons identified as presumed trafficked persons and the number of traffickers arrested, charged and successfully prosecuted for trafficking and trafficking-related offences.	One of the Scottish Government's Anti-Trafficking Progress Group's sub groups is Data Collection which is looking at collection of relevant data. Also an information sharing protocol with Police Scotland has been developed and is in its early stages of implementation.	Develop central information-sharing protocol across all the relevant agencies.
Develop effective intelligence-sharing protocols between relevant law enforcement agencies, such as local police forces, the Crown Office and Procurator Fiscal Service, the Scottish Crime and Drug Enforcement Agency and the Association of Chief Police Officers in Scotland,	A single police force, Police Scotland has been created in April 2013 with a specialised National Human Trafficking Unit that has links with the COPFS. The SCDEA has ceased to exist.	

to improve the likelihood of securing convictions of traffickers under human trafficking legislation in Scotland.		
Establish a localised multi-agency Scottish National Referral Mechanism and a local infrastructure of support in accordance with the obligations of the Convention.	There are some early discussions on this topic, including the proposal for a Scottish NRM in the consultation on a bill launched by Jenny Marra MSP.	The recommendation remains valid in 2013.
Establish a Child Trafficking Group in Scotland, to include devolved and non-devolved, statutory and non-statutory agencies, in order to establish an integrated approach to child trafficking in the country, following the good practice examples already present in the country.	Scottish Government's Anti Trafficking Progress Group's have a small group looking at Children. It includes several agencies, including SG, SRC, Children's Commissioner and COSLA.	
The Crown Office and Procurator Fiscal Service should publish guidance for all prosecutors in Scotland on the non-criminalisation of trafficked persons who may have committed offences during their trafficking, especially related to cannabis cultivation offences, immigration related and soliciting or procuring offences.	The ATMG understands that the guidance is currently being reviewed.	
Develop better accommodation provision to effectively support 16- and 17-year-old trafficked children.	A recent legal advice on Children (Scot) Act 1995 s22 and s 25. s25 stated that "in conjunction with the relevant guidance on child protection and child trafficking, does provide for PVOT up to the age of 18, in line with the EU Directive. Sections 22 and 25 of the Children (Scotland) Act 1995 define a "child" as someone being aged below 18 years for the purposes of both sections, and allows for the provision of assistance and support for those victims i.e. safeguarding and promoting the welfare of children in their area who are "in need" and providing accommodation.	The recommendation remains valid in 2013.

	<p>This case, however, highlights that there is potential for the actual services being provided to vary for children aged 16-17. Unless the child is already subject to the children's hearing system (and therefore under some form of compulsory supervision), there may be a limitation on what services can actually be provided. Additionally, where they do not consent to the provision of/ wish to engage with services, then service's involvement may be more limited. Whilst the Act meets the Directive by allowing for the provision of these services, it is acknowledged that there are difficulties with the situation where 16/17 year olds do not wish to accept services and that, ultimately, they cannot be forced to accept them.</p>	
<p>Ensure safe accommodation, support and service provision are available for trafficked persons in all parts of Scotland, both men and women.</p>	<p>There has been some progress in developments of local protocols and training by TARA project and its partners.</p>	<p>Ensure safe accommodation, support and service provision are available for trafficked persons in all parts of Scotland, both men and women.</p>
<p>Ensure appropriate provision of certain services for trafficked persons across Scotland, such as interpreting and counselling services</p>	<p>There has been some progress on this by the TARA project and its partners.</p>	<p>Ensure appropriate provision of certain services for trafficked persons across Scotland, such as interpreting and counselling services</p>
<p><b>Recommendations for Northern Ireland</b></p>		
<p>The establishment of a localised National Referral Mechanism in Northern Ireland and a local infrastructure of support in accordance with the obligations of the Convention</p>		<p>The recommendation remains valid in 2013.</p>
<p>The development of documentation available in different languages for statutory and non-statutory agencies to provide to presumed trafficked persons in Northern Ireland;</p>	<p>Information leaflets for potential victims have been published.</p>	
<p>The Public Prosecution Service should provide</p>	<p>The guidance has been launched.</p>	

<p>guidance on human trafficking for all prosecutors in Northern Ireland in order to improve the level of convictions in Northern Ireland. It should also provide guidance on the non-criminalisation of trafficked persons who may have committed offences during their trafficking, especially related to cannabis cultivation offences, immigration related and soliciting or procuring offences.</p>		
<p>The establishment of an information sharing protocol across devolved and non-devolved government departments in order to collect and publish relevant data on the extent of human trafficking in Northern Ireland, the number of persons identified as presumed trafficked persons (initially and also as a result of both 'reasonable grounds' and conclusive decisions) and the number of traffickers.</p>		<p>The establishment of an information-sharing protocol across devolved and non-devolved government departments and agencies in order to collect and publish relevant data on the extent of human trafficking in Northern Ireland, the number of persons identified as presumed trafficked persons (initially and also as a result of both 'reasonable grounds' and conclusive decisions). Such data collation and publication should account for East/West considerations with movement within and between other parts of UK and also reflect North / South data on movement of trafficked victims between Northern Ireland and Republic of Ireland. As Northern Ireland is a small region, publication on a biannual basis may be deemed appropriate to protect and identity of victims.</p>
<p>Ensure ongoing monitoring of the two guidance documents produced for the welfare and safeguarding of both child and adult victims of trafficking.</p>		

## The Anti Trafficking Monitoring Group

The Anti-Trafficking Monitoring Group (ATMG) was established in May 2009 and works to promote a victim-centred human-rights based approach to protect the well-being and best interests of trafficked persons. It was created to fulfil the role of a National Rapporteur set out in Article 29.4 of the Council of Europe Convention on Action against Trafficking in Human Beings 2005. The ATMG undertakes analytical and evaluative monitoring of the implementation of the Convention, with a view to strengthening the overall effectiveness of UK anti-trafficking policy.

This report, the fourth in the ATMG series, examines the UK's response to trafficking in accordance with relevant Convention obligations four years from the Convention coming into force.

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The views expressed herein are those of the ATMG and in no way reflect the opinion of the funders.

The ATMG comprises:

Afruca  
Amnesty International's Northern Ireland Office  
Anti-Slavery International  
Black Association of Women Step Out (BAWSO)  
ECPAT UK  
Helen Bamber Foundation  
Kalayaan  
POPPY Project (of Eaves Housing)  
Trafficking Awareness Raising Alliance (TARA of Glasgow Community & Safety Services)

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