



# KALAYAAN

justice for migrant domestic workers

## **Kalayaan’s Statement on Delays in the National Referral Mechanism Decision-Making Process**

We are publishing this statement to bring attention to the experience of Kalayaan’s service users within the National Referral Mechanism (“NRM”) decision-making process.

### Delays in Reasonable Grounds decisions

Since the changes in the Modern Slavery Statutory Guidance (“the Guidance”) in January 2023 resulting from the Nationality and Borders Act 2022 (“NABA”), there has been an increase in delays in issuing Reasonable Grounds decisions, with the Q3 2023 NRM statistics showing an average of 56 days’ wait time for a Reasonable Grounds decision made by the Single Competent Authority.<sup>1</sup> This is in contrast to the guidelines stated in the Guidance: “*The expectation is that competent authorities will make a Reasonable Grounds decision within 5 working days, where possible, of the NRM referral being received.*”<sup>2</sup>

These delays have also been felt by Kalayaan’s clients. Since the changes came into effect on 30 January 2023, only 53% of Kalayaan’s clients received a Reasonable Grounds decision within 5 working days, whereas in the equivalent number of referrals made before the change in the Guidance, 93% of clients received a Reasonable Grounds decision within 5 working days. The longest wait this year by a Kalayaan service user was 46 working days.

Such long delays have real impacts on our clients. The wait can cause deep uncertainty for individuals whose immigration status is precarious. It also delays access to the Recovery Rate of MSVCC support payments. Finally, clients can only continue to work in the UK if the Reasonable Grounds decision is made while their visa is still valid. A delay in that decision can therefore mean the difference between being able to provide for their families back home or having to survive off Government-funded financial support.

### Delays in Conclusive Grounds decisions

In October 2019, Kalayaan prepared a report called “Dignity, Not Destitution”.<sup>3</sup> In that report, we found that our clients were, on average, experiencing a wait time of 24 months for a Conclusive Grounds decision. The longest wait that a service user experienced was 37 months. The report found that our service users who were in receipt of financial support under the NRM (just £35 per week at that time) were affected by a number of issues, including struggling financially and revealed that “*the NRM had institutionalised the poverty of survivors*” by denying them the right to work and only providing a small amount of subsistence support.

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<sup>1</sup> Home Office, “Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 3 2023 – July to September”, 3 November 2023, available [here](#).

<sup>2</sup> Home Office, “Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland”, October 2023, available [here](#).

<sup>3</sup> Kalayaan, “Dignity, Not Destitution: The Impact of Differential Rights of Work for Migrant Domestic Workers Referred to the National Referral Mechanism”, October 2019, available [here](#).

The report also revealed a deterioration in the mental health of survivors, impeding their recovery and reintegration.

We confirm in this statement that we have not seen an improvement in our service users' experiences within the Conclusive Grounds decision-making process since our report in October 2019. In fact, updated data collated by Kalayaan this year shows that the average wait time for a Conclusive Grounds decision experienced by our service users is now even longer. Currently the mean wait time between receiving a Reasonable Grounds decision and a Conclusive Grounds decision is 31 months and the median is 26 months. The longest wait for a Conclusive Grounds decision experienced by a service user was 59 months (4 years and 11 months).

Moreover, these numbers do not take into account service users who have still not received Conclusive Grounds decisions. For example, in 2020, Kalayaan referred 24 individuals to the NRM, all of whom received a positive Reasonable Grounds decision. Of those 24, only 7 have received a Conclusive Grounds decision, meaning that 17 have been waiting for over 36 months (3 years) for a Conclusive Grounds decision. In fact, we have a current service user who received their positive Reasonable Grounds decision in May 2018 and has yet to receive a Conclusive Grounds decision. To date, they have been waiting for 66 months (5 years and 6 months).

These excessive delays worsen the experience of many of Kalayaan's service users. For about half of our service users who do not have the right to work under the NRM because they were given positive Reasonable Grounds decisions after their visas had expired, this means they spend years waiting for a decision without being able to work, contribute to the UK economy, and – most crucially for them – support their families back home. This situation forces many of them into poverty and back into exploitative work, even as they are recognised as potential victims of trafficking, supported under the NRM.

Service users who do have the right to work still face barriers. They are not given biometric cards proving their right to work and the only evidence of this is contained in their Reasonable Grounds decision letters which are not widely understood as proof by those unfamiliar with the NRM and the Immigration (Variation of Leave) Order 2016. Many report that the Home Office's Employer Checking Service incorrectly states that they do not have the right to work and they experience issues accessing National Insurance numbers for the same reason. This means that potential employers, and even the Department for Work and Pensions, are often not satisfied of the individual's right to work in this country. This makes it very difficult for these individuals to find safe work despite having the legal right to work and, so, many opt to take jobs which may push them back into exploitation.

In our experience, the NRM decision-making process has not improved, and has in fact worsened, since October 2019. Moreover, Kalayaan is concerned that delays to Reasonable Grounds decisions may have ripple effects in the NRM decision-making process overall and further increase wait times from point of referral to receipt of a Conclusive Grounds decision.

These delays affect Kalayaan's service users in very real and tangible ways and hinder their recovery. Kalayaan calls for a review of the NRM decision-making process and asks for open lines of communication between the Home Office and front-line organisations working with potential victims of trafficking to find solutions to better protect these individuals from further exploitation.

**Kalayaan**

4 December 2023