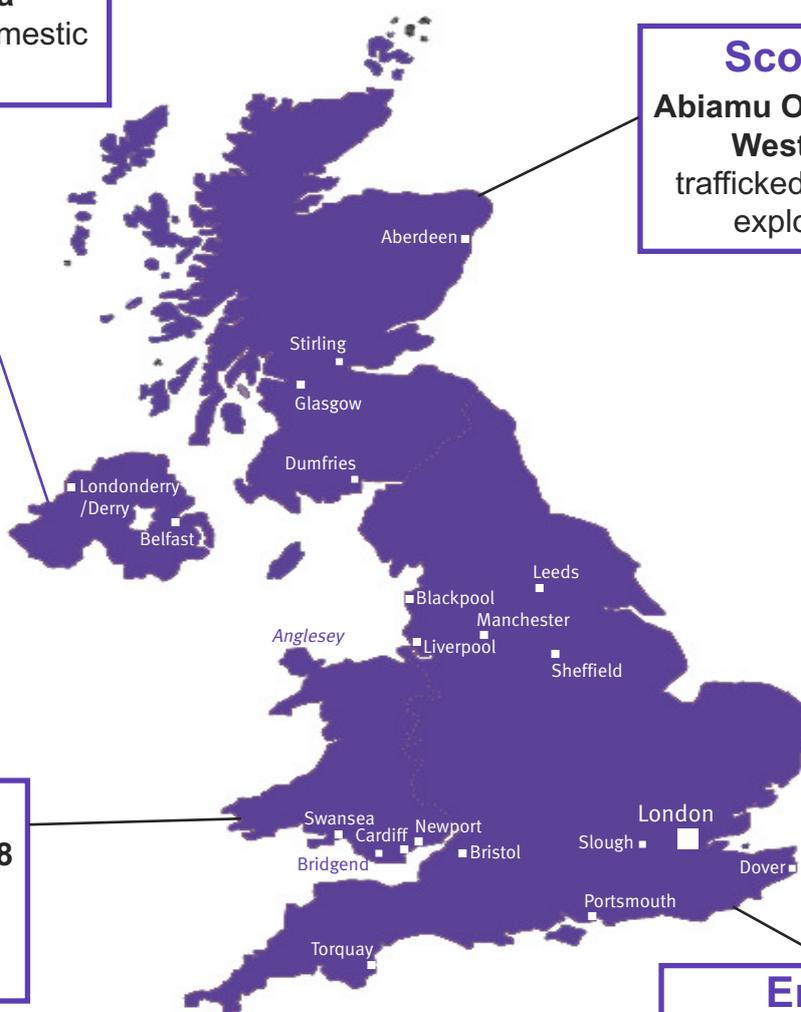


The Anti Trafficking Monitoring Group

Northern Ireland
Supriya Begum, 45
South Asia
trafficked for domestic servitude

Scotland
Abiamu Omotoso, 20
West Africa
trafficked for sexual exploitation



Wales
Mikelis Āīģle, 38
Latvia
trafficked for forced labour

England
Tuan Minh Sangree, 16
Vietnam
trafficked for forced labour in cannabis farms

Northern Ireland section excerpt from the report:

Wrong kind of victim?

One year on: an analysis of UK measures to protect trafficked persons.

Front Cover

The cases on the cover refer to real cases of trafficked persons identified in the course of the research for this report. The names were changed and ages approximated to protect the identity of these individuals.

The places indicated on the map are examples of some of the locations where cases of trafficking were identified in the course of the research for this report. This is by no means an exhaustive list.

The Anti Trafficking Monitoring Group

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The views expressed in this report are not intended to reflect the opinion of the funders.

Preface

In May 2009 a group of nine UK-based organisations set up the Anti-Trafficking Monitoring Group to monitor the implementation of the Council of Europe's *Convention on Action against Trafficking in Human Beings*, which came into effect in the UK on 1 April 2009.

The nine organisations belonging to the Monitoring Group are:

- Amnesty International UK
- Anti-Slavery International
- ECPAT UK (End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes)
- Helen Bamber Foundation
- Immigration Law Practitioners' Association (ILPA)
- Kalayaan
- POPPY Project (of Eaves Housing)
- TARA (The Trafficking Awareness Raising Alliance, of Glasgow Community and Safety Services)
- UNICEF UK

In addition, the Monitoring Group works closely with the Anti-Trafficking Legal Project (ATLeP).

Contents

Acknowledgements	1
Acronyms used in the report	5
Executive Summary	6
Introduction.....	6
Methodology.....	7
Scope of trafficking in the UK.....	7
Flawed identification system.....	8
Child victims of trafficking.....	8
Failure to implement the entirety of the Convention.....	10
Misinterpretation of key provisions.....	10
Conclusion.....	11
Recommendations.....	11
Chapter 1: Introduction	12
Purpose of this report.....	12
Central argument.....	13
Trafficking in the UK.....	13
A note on methodology.....	14
Structure of this report.....	14
Chapter 2: The Convention and its implementation in the UK	15
Overview of the Convention.....	15
UK response to trafficking.....	18
Conclusion.....	19
Chapter 3: The National Referral Mechanism	20
Origins of the UK National Referral Mechanism (NRM).....	20
Conclusion.....	22
Chapter 4: The NRM in practice	23
NRM referrals and decisions in 2009.....	23
The process of identification.....	27
Interpretation of who is a ‘victim of trafficking’.....	30
The implications of an absence of any right of appeal.....	33
Obstacles to identification in the NRM.....	33
Conclusion.....	34
Chapter 5: Decisions by UK authorities concerning children presumed to have been trafficked	35
Standards set by the Convention and International Standards.....	35
The issue of legal guardians.....	38
The challenge of preventing children being re-trafficked after going missing from care.....	39
Conclusion.....	41
Chapter 6: The impact of the NRM’s procedures on presumed trafficked persons	42
Impact of the NRM on First Responders.....	43
Granting trafficked persons a longer-term right to reside in the UK.....	44
Conclusion.....	46
Chapter 7: Issues relating to investigation and prosecution	47
Assessing when children are forced to work.....	48
Example of children convicted of cultivating cannabis.....	49
Conclusion.....	50
Chapter 8: A National Rapporteur or ‘Anti-trafficking watchdog’	51
Standards set by the Convention.....	51
The view of the UK Authorities.....	51

Chapter 9: Conclusions and Recommendations.....	53
Conclusions.....	53
Recommendations	58
Appendix 1: Methods and Sources.....	63
a) Terminology.....	63
b) Sources.....	63
c) Data Protection and Storage.....	65
Appendix 2: Review of UK law and practice related to trafficking.....	66
a) Legislation on Human Trafficking	66
b) Legislation to tackle slavery, forced labour and debt bondage.....	67
c) Convictions resulting from new laws.....	68
d) Relevant immigration law.....	69
e) Structures and responsibility.....	70
g) Responsibility for possible cases of child trafficking.....	70
Appendix 3: The referrals process.....	72
a) Referrals of adults.....	72
b) The referrals process for children.....	73
c) Competent Authority decisions and the decision-making timetable.....	73
d) Criteria for reaching ‘reasonable grounds’ and conclusive decisions.....	74
Appendix 4: Challenges to the correct identification of trafficked children.....	75
Appendix 5: Review of UK practice on specific measures recommended in the Convention.....	78
a) Victim Assistance.....	78
b) Access to Legal Assistance.....	85
c) Non-criminalisation.....	86
d) Prosecution of traffickers.....	88
e) Protection during Criminal Justice Proceedings.....	90
f) Access to compensation.....	92
g) Victim Return.....	93
h) Prevention strategies.....	95
i) Coordination with Civil Society.....	98
Appendix 6: Issues in Northern Ireland, Scotland and Wales.....	100
a) Northern Ireland.....	100
b) Scotland.....	105
c) Wales.....	110
Bibliography.....	115
Glossary.....	118

Acronyms used in the report

A2 National:	A citizen of Bulgaria or Romania
A8 National:	A citizen of the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia or Slovenia
ATLeP:	The Anti-Trafficking Legal Project
BAWSO:	Black Association of Women Step Out
CEOP:	Child Exploitation and Online Protection agency
CPS:	Crown Prosecution Service
CTAIL:	The National Child Trafficking Advice and Information Line run by the NSPCC
ECPAT UK:	End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes UK
EEA:	European Economic Area: 30 States, including the 27 EU States and also Iceland, Lichtenstein and Norway. Switzerland is not in the EEA, but Swiss nationals have the same rights as EEA nationals.
EU:	European Union
GLA:	Gangmasters Licensing Authority
GRETA:	The Group of Experts on Action against Trafficking in Human Beings
HIV/AIDS:	Human Immuno-deficiency Virus/Acquired Immune Deficiency Syndrome
ILO:	International Labour Office and International Labour Organization
ILPA:	Immigration Law Practitioners' Association
IOM:	International Organization for Migration
MARAC:	Multi-Agency Risk Assessment Conference
MP:	Member of Parliament
NASS:	National Asylum Support Service (it no longer exists but the name is still in use. Its functions are carried out by the UKBA)
NGO:	Non-governmental organisation
NHS:	National Health Service
NRM:	National Referral Mechanism
NSPCC:	National Society for the Prevention of Cruelty to Children
ODIHR:	OSCE's Office for Democratic Institutions and Human Rights
OHCHR:	United Nations Office of the High Commissioner for Human Rights
OSCE:	Organization for Security and Co-operation in Europe
PSNI:	Police Service of Northern Ireland
SOCA:	Serious Organised Crime Agency
TAC:	Team Around Children
TARA:	Trafficking Awareness Raising Alliance (of Glasgow Community and Safety Services)
TUC:	Trades Union Congress
UK:	United Kingdom
UKBA:	UK Border Agency (a UK statutory agency)
UKHTC:	UK Human Trafficking Centre (a UK statutory agency based in Sheffield)
UN:	United Nations
UNHCR:	United Nations High Commissioner for Refugees
UNICEF:	United Nations Children's Fund

Executive Summary

Introduction

In December 2008 the UK ratified the Council of Europe Convention on Action against Trafficking in Human Beings. The Convention is the first international treaty obliging states to adopt minimum standards to assist trafficked persons and protect their rights.

The Convention came into force in the UK in April 2009 but without an accompanying formal monitoring mechanism. In its absence, in May 2009 a group of nine UK-based organisations set up the Anti-Trafficking Monitoring Group to monitor the implementation and to share the information they were able to gather about the UK's compliance with the Convention.

This summary presents the results of the group's research to examine how the UK and its devolved administrations are meeting their obligations under the Convention. It finds that the UK Government's anti-trafficking practice is not compliant with the Council of Europe Convention on Action Against Trafficking in Human Beings and, where it relates to children, is not compliant with other aspects of UK law or best practice.

The Convention defines trafficking as **acts** (such as recruitment, receipt, transportation) by **means** (such as threats, coercion, deception, abuse of position of vulnerability) for the purpose of **exploitation** (such as sexual exploitation, forced labour or slavery). Trafficking is defined as a crime and anyone who has been subject to the crime of trafficking should be recognised as a victim of trafficking.

The Monitoring Group identified, that in some parts of the UK, the implementation of the Convention has led to increased awareness about human trafficking.¹ Pockets of good practice seem to be developing in some areas, where stakeholders have begun to cooperate and coordinate in the absence of functioning central coordination. Such examples were seen in Bristol (where the Bristol Coalition on trafficking was created), and Wales (where a strategic lead for trafficking was created, operational points of contact were identified within the four Welsh Police forces and Gwent police convened its first consultation meeting with partner agencies including NGOs).

However in summary this report argues, based on our extensive research, that the UK is not yet meeting its obligations under the Convention. The key reasons are that, in implementing the Convention, 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 in the implementation of the Convention.

The findings of this report suggest that anti-trafficking practice in the UK is not compliant with key concepts relating to *rule of law* itself, specifically relating to the principle identified by Lord Bingham (2010)² that "questions of legal right and liability should ordinarily be resolved by application of the law and not exercise of discretion". It is a finding of this research that this principle is routinely violated in the National Referral Mechanism (NRM), the identification procedure established as part of the implementation of the Convention to help identify the victims of trafficking.

These problems, discussed in greater detail below, profoundly hamper realisation of the UK's obligations in the areas of protection and prosecution. Furthermore, there has been little to no meaningful engagement in the area of prevention.

¹ Information from Northern Ireland, Scotland and Wales.

² Bingham, T., *The Rule of Law*. London, Allen Lane, 2010.

The obligations for identification, protection, prosecution and prevention are closely intertwined. Consequently, responses also need to be linked, which implies the need for a national anti-trafficking watchdog to oversee matters. While this role is also suggested in the Convention, to date the UK Government has rejected it as unnecessary.

Methodology

The report focuses on the experience of people who have managed to escape from traffickers or who have been withdrawn from the control of others. In some cases, escape or recovery has allowed the individuals to improve their lives and heal from the trauma of trafficking. In others, the individuals who have been ill-treated by modern-day slave traders have been subject to further violations of their human rights and, in some cases, to treatment at the hands of the UK authorities which has impeded their recovery.

The report was compiled using information from public sources, from 90 interviews with professionals engaged in anti-trafficking work and by reviewing 390 individual cases. The information was obtained between September 2009 and April 2010.

Scope of trafficking in the UK

The UK Human Trafficking Centre (UKHTC) reported in its published statistics that between April and December 2009 the cases of 527 potential victims of trafficking were referred to the National Referral Mechanism (NRM).³ The figure was confirmed by the designated Home Office Minister during a debate in the House of Commons on 20 January 2010.⁴

Those individuals referred to the NRM came from a total of 61 countries. By far the largest source countries were Nigeria (89 people) and China (70 people). Also noticeable was Vietnam with 46 people; a significant proportion of whom are understood to have been children. The country with the next largest number of people referred was the UK itself with 37, while the next three countries (in terms of the numbers of people who were referred) were all EU countries. Out of the 527 people who were referred, 389 (74 per cent) were women or girls and 138 (26 per cent) were men or boys. Just over 140 were described as children (i.e. under 18) in the referral (26.7 per cent of the total⁵). 195 adults (37.1 per cent) were referred as potentially trafficked for sexual exploitation and 33 per cent of total as potentially trafficked for forced labour (207).

While the data collected on the 'in' referrals to the NRM for the first time formally confirmed high proportions of presumed trafficked persons from West Africa and cases of labour trafficking, no details were published about the decisions made in response or the support offered to those found to have been trafficked. The information in this report was obtained as a result of Parliamentary Questions and *Freedom of Information* requests, interviews and case review. The responses to questions were essential to build up a picture of how the system was functioning.

The number of referrals is not a true reflection of the extent of trafficking in the UK or the number of individuals who have been victims of traffickers in the UK. This research collected information about **more than 130 individuals** who were identified by support organisations between 1 April 2009 and 1 April 2010 **whose cases were not referred to the system for a variety of reasons, but primarily because they did not see the benefit of being referred or were fearful of the consequences** of being brought to the attention of the authorities because of their immigration status – a paradoxical situation, as it concerns precisely the same fear that traffickers often use to control their victims.

These figures corroborate the initial concern that the nature of the NRM itself actually deters a significant proportion of the intended beneficiaries from using it; and therefore from accessing services and exercising their rights. This suggests the system is not fit for purpose.

³ By 18 January 2010, the number of referrals had risen to 557.

⁴ Alan Campbell MP, Parliamentary Under-Secretary of State for the Home Department, House of Commons debates, Hansard, 20 January 2010: Column 125WH, accessed on 3 March 2010 at www.publications.parliament.uk/pa/cm200910/cmhansrd/cm1-00120/halltext/100120h0009.htm

⁵ This information has not been published by the UKHTC, it was obtained by the research through requests made under the *Freedom of Information Act* 2000 and analysed.

Flawed identification system

The principal response of the Government to their obligations as party to the Convention was the establishment of an identification system called the National Referral Mechanism (NRM). The OSCE suggest⁶ that NRMs should be a multi-agency coordination system and their every stage an opportunity to help trafficked persons. The system appears to be relying excessively on the discretion of officials who receive minimal training to staff a mechanism supported by flawed legal guidance relating to who should be identified as victims of trafficking, and without a formal appeals process. This fails to consistently identify and assist people who have been trafficked. Furthermore, the system appears to be putting more emphasis on the immigration status of the presumed trafficked persons, rather than the alleged crime committed against them. The UK citizens referred were speedily identified as having been trafficked with a rate of 76 per cent of cases positively identified as trafficking, in contrast with the rate of cases positively identified as trafficked as a whole of 19 per cent. The rate of nationals from other EU states identified as trafficked was 29.2 per cent, while that of nationals from countries outside the EU was only 11.9 per cent. The different rates of positive identification should not be interpreted as evidence per se of discrimination against people originating outside the EU. However, the difference in success is startling. On this basis alone, these figures merit further investigation by the Home Office, to check that individuals from outside the EU are not being subject to discrimination in the decision-making process.

This report argues that the term 'referral' into the NRM has been misused to refer narrowly to a procedure for vetting whether individuals meet a bureaucratic standard for having been trafficked. In practice this often fails to meet the needs of people who have suffered abuse and trauma at the hands of those who trafficked and exploited them. In effect, in the UK 'referral' means that the case of an individual is being submitted to a central government authority to decide on their status, not that they are being referred to a range of specialised services.

When victims are wrongly identified this has serious consequences for the person concerned: it risks compounding the already traumatic experience of having been trafficked by setting back their recovery and removing any faith individuals may have had in the authorities and their ability to offer protection and assistance; thus undermining prosecutions and causing further breaches of individual's human rights.

The UK authorities consequently seem to have misconstrued the concept of 'competent authorities' as understood under the Convention⁷ and international law more generally and restricted the role of identifying and referring presumed victims to a specific authority known as the Competent Authority. In the UK the Competent Authority role is fulfilled by designated officials from the UK Border Agency.

The research found that the system has not facilitated prosecutions as expected and in some instances the police were concerned that it even undermined prosecutions. No specific statistics on the total number of prosecutions or the number of successful prosecutions since April 2009 are available. In response to a *Freedom of Information* request⁸ in January 2010, the UKHTC reported that since April 2009 a total of 36 individuals, (17 of them women), who were arrested across England and Wales on trafficking offences, had cases against them heard in court.

Child victims of trafficking

Children comprised just under a third of the 527 individuals referred to the NRM in 2009. Of the 143 referred children, 85 were reported to be girls and 58 were boys; approximately half (69) were below the age of 16 and half (72) were aged 16 or 17. Of those, 45 girls and two boys were trafficked for sexual exploitation; 12 girls and seven boys were trafficked for domestic servitude; 34 boys and 13 girls were trafficked for forced labour; and in 30 cases (half boys and half girls) the form of exploitation was not known. The question explored in the course of this research with regard to children is whether the procedures introduced in April 2009 have resulted in any improvement in comparison to pre-existing systems.

⁶ Office for Democratic Institutions and Human Rights/Organization for Security and Co-operation in Europe, *National Referral Mechanisms. Joining Efforts to protect the Rights of Trafficked Persons. A Practical Handbook*, 2004, page 15, accessed on 2 March 2010 at www.osce.org/documents/odihr/2004/05/2903_en.pdf

⁷ Under the Convention, 'Competent Authorities' are different authorities that come into contact with persons who might have been trafficked. The Convention places obligation on all these authorities.

⁸ *Freedom of Information* request 20090647 answered by UKHTC on 18 January 2010, accessed on 6 April 2010 and available at www.southyorks.police.uk/foi/disclosurelog/20090647-0

The research examines in some detail the impact of the implementation of the Convention on child victims of trafficking. A strong and mature framework exists in the UK to safeguard children and the Government has clearly stated that it views child trafficking as a form of child abuse. However in setting up the NRM the UK in effect decided to bypass this existing system and not to task local authority children's services to act as the primary identifier in cases of children who may have been trafficked, despite their expertise in child protection and their statutory duty to safeguard children. Instead, they are required to refer the case for decision to the NRM, which is viewed by a number of research respondents as having insufficient expertise in relation to children. Several of those concerned about the cases of trafficked children expressed the view to the Monitoring Group that it was not appropriate for the Home Office to be the government department with lead responsibility concerning trafficked children and that its place should be taken by relevant government departments responsible for children. Children are not 'mini-adults' and attempting to fit them into the system for adults is inappropriate.

The special measures for children contained in the Convention provide its added value to UK law, policy and practice, and this is where the Convention could have made a significant difference to the treatment of child victims of trafficking; augmenting the rights and safeguards already in place for children. It contains various provisions which are specific to children and confirms that procedures concerning children (or young people who might be children) must be different to those that concern adults. These special measures include that a suspected child victim should be considered a child and given the benefit of the doubt that they are a child when their age is uncertain and requires that immediately after an unaccompanied child is identified as a victim, they shall be provided with a legal guardian, organisation or authority to act in the child's best interest, before being referred into the NRM.

There are a number of challenges to the successful identification and protection of child victims of trafficking in the UK discussed in detail in the full report. Of particular significance is the need for frontline service providers to be able to identify suspected child victims of trafficking at the earliest possible opportunity. This necessitates both understanding of trafficking on the part of those agencies likely to come across child victims of trafficking and an ability to recognise children as children. A crucial issue in terms of the UK authorities viewing children as victims of trafficking concerns the locations in which a suspected child victim may be found, such as in a brothel, cannabis factory or forced into petty street crimes such as ATM theft and pick-pocketing. The report details the problems that occur when statutory agencies do not recognise situations of exploitation as potential trafficking cases and instead identify a young trafficked person as a criminal, rather than a victim of crime.

The assessment of the age of unaccompanied and separated children arriving in the UK is a controversial issue. Children who may have been trafficked are frequently found without identification documents or with false documents and additionally may have been instructed by their traffickers to lie about their age (as well as other matters), to appear either older or younger than their actual age. This situation is exacerbated when traffickers have provided children with forged passports or other identity documents that state they are adults. The research reveals concerns by child protection organisations that the UKBA and other statutory agencies do not give young people this "benefit of the doubt", as they are required to, including by their own policy guidance, in disputed cases. This is a significant problem.

It is also of great concern that no-one is required to represent the child's best interests, as required by the Convention, since in principle children, like adults, are only likely to want their case referred if it is in their best interests. One solution here would be to appoint a legal guardian at an early stage, before a child's case is referred to the NRM.

As well as the need for a guardian to be responsible for upholding the best interest for trafficked children, the research identifies the need for safe accommodation and other services, such as adequate legal representation and interpreters, which are not routinely available. The lack of suitable accommodation and adequately trained supervisors or foster parents has been highlighted by the ongoing scandal of children going missing from care.

Failure to implement the entirety of the Convention

The 47 Articles of the Convention require a holistic approach to dealing with trafficking: namely that it requires states to take measures to protect victims, prevent trafficking, prosecute those responsible and ensure that states combat trafficking through international cooperation. However there is neither a national watchdog with the powers to ensure that this occurs, nor a National Victim Care Coordinator to ensure and monitor that all presumed trafficked persons can access their rights under Article 12 of the Convention.

As a result, access to services for identified victims of trafficking is usually patchy. Dedicated accommodation for trafficked women is, in theory, available in England, Wales, Northern Ireland, and Scotland. In practice, space in appropriate accommodation is not always available and some trafficked women have been housed in unsuitable places. Accommodation for male victims of trafficking is severely limited and NGOs often have to find resources to fund specialised services. In addition to accommodation, other services such as interpreters or legal representations are routinely not available.

Another key obligation that has not been met concerns access to compensation. The Government is not providing information to all trafficked persons about compensation they might be entitled to and is preventing them from staying in the UK to pursue it.

The creation of a national anti-trafficking watchdog charged with overseeing the implementation of the whole of the Convention could have prevented such gaps.

Misinterpretation of key provisions

The Monitoring Group found a few individual cases where the intervention of the police helped uphold the “non-punishment clause” of the Convention. For example, in a case of an Eastern European woman, the police alerted a service provider to a woman being held in custody, after having been arrested for immigration offences and possession of stolen documents. Both the service provider and police were concerned that this woman had been trafficked. The police communicated their concerns to the court and the court decided to take no further action against her.

However such cases appear to be the exception rather than the rule. The analysis reveals that one of the key problems is the incorrect application of the trafficking definition when assessing a victim. Too often the authorities fail to apply the Convention and do not define as victims all those who were subject to the crime of trafficking. Instead, the system creates a narrow, legally dubious, interpretation of a victim, and attaches conditions that have been proven to impede identification, and have also been found to undermine prosecution in some cases. For example, in numerous cases reviewed by the research, the authorities concluded that as the person concerned agreed to come to the UK for work, they could not have been trafficked despite the fact that the deception and abuse should, according to the Convention, render such consent irrelevant.

In recent years the police have discovered numerous cannabis farms in England, Scotland and Wales, many of them located in private houses.⁹ Often the adults or children encountered by police during raids had recently arrived from other countries, notably Vietnam. There are good grounds for considering that some of these individuals were subjected to forced labour and had been trafficked. However, the prosecutions of these individuals that have resulted suggest the UK authorities have great difficulty in identifying anyone arrested in a cannabis farm as a potential victim of trafficking.

In these cases and other similar ones, the UK authorities seem to have recognised that cannabis ‘gardeners’ have been subjected to pressure, but concluded they were nevertheless responsible for their crime and should be punished. Further, the UK authorities have not protected the person concerned from the pressures exerted on them by their traffickers and/or exploiters.

⁹ For example, the *Daily Mail* reported on 10 March 2009 that, “Twenty-nine forces revealed that they had uncovered more of the drug being grown, including Gwent which detected no factories in 2004 but 151 last year. The largest force in the UK, London’s Metropolitan Police, reported an increase from 206 to 654, while West Midlands saw a rise from 174 to 672”. See, ‘Police raids on cannabis factories on the rise as UK drug cultivation soars’, *Daily Mail*, 10 March 2009, accessed on 25 March 2010 at www.dailymail.co.uk/news/article-1160845/Police-raids-cannabis-factories-rise-UK-drug-cultivation-soars.html.

In other words, in a critical area the anti-trafficking system practised in the UK does not seem to be ensuring non-punishment of victims of trafficking. Despite existing guidance from the Crown Prosecution Service, victims of trafficking are still routinely prosecuted for offences they committed when coerced. Victims are prosecuted, while the real criminals continue their profitable business.

This research suggests the UK is creating a 'hierarchy' of victims, and allows, intentionally or not, discrimination against certain categories of victims, such as those who were trafficked before the Convention came into force (but identified after), or those coming from particular countries or regions. The research indicates that the system fails to treat those who have been trafficked as victims of crime and places too much emphasis on judging them, rather than bringing traffickers to justice.

Conclusion

Based on the research undertaken as part of this project the Anti-Trafficking Monitoring Group argues that, in practice, the UK has not established a system led by the principle that a person who has been trafficked has experienced abuse and requires time to recover before being exposed to the rigours of an immigration system that is designed to identify and remove people without entitlement to remain in the UK. The existing system is neither satisfying the provisions of the Convention nor key principles of *rule of law* itself. Pockets of local good practice contrast with the centralised system that lacks any formal coordination and seems to be failing to refer trafficked persons to assistance and protection. The system has so far failed to contribute significantly to either an increase in prosecution or a wider knowledge on trafficking. Further, the structures in place for children do not seem to have added any value at all and have complicated matters unnecessarily, making it more difficult to protect child victims of trafficking.

Recommendations

The research identified a number of areas that need improvement to ensure that the UK meets its obligation under the Convention, in particular with the upcoming review of the UK by GRETA, the formal monitoring body of the Convention. In particular, we believe that the Government should reform the current system to:

1. Restructure and reduce the administrative process of the National Referral Mechanism in order to:
 - act as a multi-agency identification and referral mechanism, increasing access to services for victims;
 - introduce the right to appeal into the identification process;
 - review the application of the definition of trafficking to ensure that it reflects the UK's obligations under the Convention and is consistently applied to all victims of trafficking;
 - in cases of children embed it into the child protection system and give the services responsible for child protection the authority to make decisions;
 - give guidance on cases where the age of a young person is disputed and strictly apply the requirement of the benefit of the doubt.
2. Bring the system of identification and referral closer to the victims, on a devolved, regional and local level, building on the existing good practice multi-agency model.
3. Introduce an independent and public review of all negative decisions made by the Competent Authority to ensure the accountability of decision-makers and the quality of decision-making.
4. Ensure that no victims of trafficking are prosecuted for crimes that they committed while under coercion. In particular, stop child victims of trafficking from being prosecuted.
5. Uphold the best interest of the child in all decisions and introduce a system of guardianship for children with explicit responsibility to represent the child's best interest.
6. Appoint an independent anti-trafficking watchdog, based on the model of the Dutch National Rapporteur on Trafficking in Human Beings, with statutory powers to request information from the police, the immigration authorities, social services and NGOs and to report to the Parliament.

Chapter 1: Introduction

“Human trafficking is one of the most vile and horrendous crimes threatening our society. Those who are responsible for this modern form of slavery are profiting from human misery and suffering. We have reached a major milestone today in the fight against trafficking by implementing measures that help us build on our existing efforts to turn the tables on traffickers and provide victims with protection, support and a voice in the criminal justice system”. (Jacqui Smith MP, Home Secretary, on 1 April 2009, the day the Council of Europe Convention entered into force in the UK).¹⁰

Purpose of this report

Human trafficking is frequently denounced by political leaders in the UK as a ‘vile and wicked crime’, and a ‘modern form of slavery’, among other condemnatory terms. In response to this, in December 2008 the UK ratified the Council of Europe *Convention on Action against Trafficking in Human Beings* (referred to subsequently as ‘the Convention’).¹¹ The Convention is the first international treaty obliging states to adopt minimum standards to assist trafficked persons and protect their rights. The civil society welcomed this step as a positive indication of UK’s intention to protect the rights of trafficked persons.

The Convention came into force in the UK in April 2009 but without a formal monitoring mechanism of the type recommended by the Convention. In its absence, in May 2009 a group of nine UK-based organisations¹² set up the Anti-Trafficking Monitoring Group (the Monitoring Group from now on) to monitor the implementation, and to share the information they were able to gather about the UK’s compliance with the Convention. This report is the result of the group’s research to examine how the UK and its devolved administrations are meeting their obligations under the Convention. It covers the first 12 months of the Convention being in force in the UK, from 1 April 2009 until 31 March 2010.

The Monitoring Group started its work with the following specific questions:

1. Is the UK Government meeting its obligations under the Convention?
2. How effective and human rights-centred are anti-trafficking policies in the UK?
3. Do current strategies protect the human rights and promote the social reintegration of victims of trafficking?
4. Do current policy and practice guarantee gender equality?
5. Do anti-trafficking measures implemented in the UK follow a child-sensitive approach?
6. How could the current knowledge base on human trafficking in the UK be improved?
7. How can civil society monitor anti-trafficking responses by government institutions most effectively?
8. Would the appointment of an independent UK National Rapporteur on Trafficking improve policy implementation and monitoring?

This report does not focus on the accounts of individual experiences of forced labour and sexual exploitation, vital as those accounts are. Rather it focuses on the effectiveness of the British Government response to this “vile and wicked crime” through considering the experiences of professionals and presumed trafficked people who have come into contact with Britain’s official efforts to counter trafficking.

¹⁰ *Statement from the Home Secretary*, Jacqui Smith MP, press.homeoffice.gov.uk/press-releases/New-measures-human-trafficking.html, accessed on 19 March 2010.

¹¹ The Council of Europe’s *Convention on Action against Trafficking in Human Beings*, Council of Europe Treaty Series - No. 197, accessed on 18 May 2009 at conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=197&CM=1&CL=ENG.

¹² The nine organisations belonging to the Monitoring Group are: Amnesty International UK, Anti-Slavery International, ECPAT UK (End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes), Helen Bamber Foundation, Immigration Law Practitioners’ Association (ILPA), Kalayaan, POPPY Project (of Eaves), TARA (The Trafficking Awareness Raising Alliance, of Glasgow Community and Safety Services), UNICEF UK. In addition, the Monitoring Group works closely with the Anti-Trafficking Legal Project (ATLeP).

In some cases, their experiences of the official, institutional response are relatively positive. In others, the very individuals who have been ill-treated by modern-day slave traders have been subject to further violations of their human rights and, in some cases, to treatment at the hands of the UK authorities that has, at least, impeded their recovery.

Central argument

While the Monitoring Group recognises the Government's efforts to combat trafficking in human beings and welcomed the UK's accession to the Convention, the Monitoring Group was disappointed by the impact of the new system.

This report argues, based on our extensive research, that the UK is not yet meeting its obligations under the Convention. The key reasons are that, in implementing the Convention, the Government:

- has misunderstood key provisions of the Convention;
- has not addressed the entirety of the Convention;
- has delegated considerable authority on identification to a flawed mechanism staffed by substantially unaccountable officials.
- has overlooked the necessary safeguards for child victims of trafficking in the implementation of the Convention.

Regarding particularly the third point the findings of this report suggest that anti-trafficking practice in the UK is not compliant with key concepts relating to the *rule of law* itself, specifically relating to the principle identified by Lord Bingham (2010) that "questions of legal right and liability should ordinarily be resolved by application of the law and not exercise of discretion".¹³ It is a finding of this research that this principle is routinely violated in the National Referral Mechanism (NRM), the identification procedure established as part of the implementation of the Convention to help identify victims of trafficking.

These problems, discussed in greater detail below, hamper realisation of the UK's obligations in the areas of protection and prosecution. Furthermore there has been little to no meaningful engagement in the area of prevention.

Trafficking in the UK

Myths about trafficking still exist and often impede identification. For example, to understand the real nature of forced labour, we need to understand the link between coercive exploitation and the abusive treatment that workers might be subjected to as a result of "rational" choice.¹⁴ Traffickers have become more sophisticated and the coercion they apply more complex and "invisible". Instead of kidnapping, physical violence, and keeping victims under lock, traffickers tend to use methods that create a complex web of control, through debt bondage, psychological violence and threats, use of modern information technologies and intimidation to put their victims into a situation of total dependence, where victims are scared or too intimidated to escape or reveal what happened to them.

In many cases, victims may appear "free". Sometimes, they might get paid some money. However, often these appearances merely mask the coercion: debt bondage, control over people's identity or immigration status, threats and other psychological pressures are very real factors that control behaviour as much as any physical imprisonment. These forms of coercion leave serious psychological consequences.

Increasingly, people are trafficked for the purposes of criminal activities – such as petty crime, benefit fraud, credit card fraud or cannabis cultivation. However, when authorities encounter such situations, it might be very difficult initially to distinguish who is the victim of crime and who is the perpetrator. Indeed the traffickers who benefit from the trade in human beings more often than not go unpunished. The enterprise of trafficking remains one where the return on the "investment" is high, risks are low and the cost of human suffering enormous.

It is important to understand the changing nature of trafficking, the methods of control and their consequences in order to address the crime of trafficking properly: that is to ensure appropriate measures

¹³ Bingham, T., *The Rule of Law*. London, Allen Lane, 2010.

¹⁴ Speech by the Roger Plant, the head of the Special Action Programme on Forced labour of the ILO, at a conference "Work - Migration - Rights; Strategies against Trafficking in Women", Vienna, October 2008.

are put in place to prevent trafficking where possible, to effectively identify, protect, help recover and facilitate redress to those who have been trafficked and to ensure that those who have sought to profit from trading in the lives of other human beings are prosecuted and punished for their crimes.

A note on methodology

The report does not pretend to be a comprehensive analysis of every trafficking or presumed trafficking case in the UK. Rather it is a qualitative assessment of anti-trafficking practice in the UK based upon extensive research amongst professionals who have come into contact with the system as currently practised and a review of some 390 cases (further details of the sources are outlined in Appendix 1). As such it is explicitly an exploratory piece of research aimed at illuminating the critical areas that should be of concern to the Government if they wish to ensure that British efforts to counter trafficking are compliant with the provisions of the Convention, to which they are a party. At the very least this study should provoke further, transparent and publicly available research by Government to quantify more precisely the problems that this qualitative research has so starkly raised. The fact that there is no national watchdog in place to monitor and evaluate anti-trafficking strategy, both made this study necessary and indicates a key recommendation of this report: that in order to deal with such a complex crime, which requires a sophisticated response from a range of government agencies, there is the need for a national watchdog to oversee national anti-trafficking efforts.

Structure of this report

Chapter 1 is the introduction which outlines the background to and the purpose of this report.

Chapter 2 describes the key provisions of the Convention.

Chapters 3, 4, 5, and 6 describe the key areas where British Government efforts to implement the Convention are most problematic. These relate apparent misunderstandings of key provisions of the Convention, a failure to address the entirety of the Convention, the delegation of considerable authority on identification to a flawed mechanism staffed by substantially unaccountable officials, and finally significant failures around the issues of child protection.

Chapter 7 describes some problematic issues relating to investigation of trafficking and protection of presumed trafficked people.

Chapter 8 discusses the potential value of a national rapporteur or trafficking watchdog.

Chapter 9 outlines the conclusions and recommendations of the research. These, we argue, are intended to ensure the UK fulfils the obligations it has undertaken with the ratification of the Convention – notably relating to the protection of people who have been trafficked.

This report also includes substantial appendices, including descriptions of the situations in Northern Ireland, Scotland and Wales, and the Monitoring Group's recommendations for action in each.

Chapter 2: The Convention and its implementation in the UK

Overview of the Convention

Ministers from Council of Europe Member States adopted the Council of Europe *Convention on Action against Trafficking in Human Beings* in Warsaw on 16 May 2005. It entered into force on 1 February 2008. By 1 April 2010 it had been ratified by 26 Member States and signed by a further 17 Member States.¹⁵

The *Explanatory Report* accompanying the Convention summarises its provisions as follows. "The Convention contains a Preamble and ten chapters:

- Chapter I deals with its purposes and scope, the principle of non-discrimination and definitions;
- Chapter II deals with prevention, cooperation and other measures;
- Chapter III deals with measures to protect and promote the rights of victims, guaranteeing gender equality;
- Chapter IV deals with substantive criminal law;
- Chapter V deals with investigation, prosecution and procedural law;
- Chapter VI deals with international cooperation and cooperation with civil society;
- Chapter VII sets out the Convention's monitoring mechanism; lastly
- Chapters VIII, IX and X deal with the relationship between the Convention and other international instruments, amendments to the Convention and final clauses".¹⁶

Definitions of human trafficking

The Convention contains the same definition of human trafficking as that adopted five years earlier in the United Nations (UN) *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*,¹⁷ supplementing the UN *Convention against Transnational Organized Crime* (2000).

The definition of human trafficking in Article 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.

¹⁵ www.coe.int/t/dghl/monitoring/trafficking/default_en.asp, accessed on 26 April 2010.

¹⁶ Paragraph 37, Council of Europe *Convention on Action against Trafficking in Human Beings Explanatory Report*, Council of Europe Committee of Ministers document CM(2005)32 Addendum 2 final, 3 May 2005. Accessed on 31 March 2010 at tiny.cc/1xdnt

¹⁷ Signed by the UK in December 2000 and ratified on 9 February 2006. Accessed 22 March 2010 at: www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html.

A number of points should be highlighted from the above definition, which, it should also be noted, the UK has agreed to in signing and ratifying the Convention.

First, as far as adults aged 18 and over are concerned, this definition requires three different elements to be present for a case to be identified as trafficking:

- their recruitment (**or** their “transportation, transfer, harbouring or receipt”);
- the use of abusive means of control, (“the threat or use of force or other forms of coercion ...”) in the process of recruitment;
- and their subsequent exploitation – or an intention to exploit them – in the ways mentioned in the (non-exhaustive) list at the end of Article 4(a).¹⁸

Second, the definition explicitly states that the issue of “consent” of victims is irrelevant. Third, like the UN Trafficking Protocol, the Convention defines children as anyone under the age of 18 and it defines the trafficking of children slightly differently from the trafficking of adults. The Convention states that, in the case of a child, the abusive means listed in Article 4(a) need not have been used in order for the case to be considered one of trafficking. For both adults and children, the definition of “exploitation” is the same.

Key provisions of the Convention

States which are Parties to the Convention accept an obligation to take individual and collective action to criminalise trafficking and prosecute those responsible for it, as well as a range of other minimum steps necessary to respect and protect the rights of trafficked persons. These steps include, among others, ensuring that:

- coordination at national level is established or strengthened between agencies and organisations involved in preventing and combating trafficking in human beings (Article 5). This means States Parties are required to coordinate the various “sectors whose action is essential in preventing and combating trafficking, such as the agencies with social, police, migration, customs, judicial or administrative responsibilities, non-governmental organisations, other organisations with relevant responsibilities and other elements of civil society”,¹⁹
- a mechanism is in place for the accurate identification of trafficked persons (Article 10);
- persons reasonably believed to have been trafficked are granted at least 30 days to recover in the country where they have been identified and reflect on whether they wish to provide information to law enforcement officials (Article 13), during which time they are to be offered assistance and protection and may not, even if they have no legal right to be in the country concerned, be expelled – regardless of whether they agree to participate in any proceedings the authorities may decide to pursue against those responsible for trafficking or exploiting them;
- if a trafficked person is required to leave a country where they have been identified as trafficked, the departure should “preferably be voluntary” and their return to their country of origin is to be “with due regard” for their “rights, safety and dignity” (Article 16), imposing on the authorities an obligation to assess the risks associated with their forced return and not to proceed with it if certain types of risk are identified; and that
- trafficked persons have access to redress, including compensation (Article 15).

Unlike the preceding UN Trafficking Protocol and European Union (EU) instruments to standardise responses to human trafficking in the EU (notably the EU *Council Framework Decision of 19 July 2002 on combating trafficking in human beings*²⁰) the Convention sets out minimum standards concerning requirements of assistance and protection measures which States Parties must take to protect and respect the rights of trafficked persons. Among them are requirements unconditionally to ensure to persons reasonably believed to have been subjected to trafficking:

- an adequate standard of living;
- appropriate and secure accommodation;
- access to emergency medical treatment;
- translation and interpretation services;
- counselling and information on their legal rights; and
- legal assistance.²¹

¹⁸ It should be noted also that each of the separate elements may constitute a crime in its own right.

¹⁹ Paragraph 102, Council of Europe *Convention on Action against Trafficking in Human Beings Explanatory Report*.

²⁰ Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings [Official Journal L 203 of 01.08.2002]. Accessed on 18 March 2010 at europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/l33137_en.htm

²¹ Article 12.1 (a) to (e), *Convention on Action against Trafficking in Human Beings*.

The Convention specifies that assistance is to include “at least” these measures.

The Convention also requires States to establish “effective policies and programmes to prevent trafficking in human beings” (Article 5.2) and requires that, in pursuing such policies and programmes, States Parties shall “promote a Human Rights-based approach” and “use gender mainstreaming” (Article 5.3). Elsewhere the Convention calls for the promotion of “gender equality” in the context of measures to protect and promote the rights of victims, in both Article 1, on the purpose of the Convention, and Article 17, which calls for gender equality to be guaranteed in the context of all the measures to protect and promote the rights of victims specified in articles 10 to 16.

The *Explanatory Report* (paragraph 32) comments that, “The convention will be geared towards the protection of victims’ rights and the respect for human rights, and aim at a proper balance between matters covering human rights and prosecution.”

“A victim-centred approach...means taking the needs of the trafficking victim to be protected, assisted and ultimately empowered to live a dignified life, as the fundamental starting point during all phases of criminal proceedings. And I want to stress that adhering to this principle, often also referred to as the human rights-based approach, is not an option but an imperative for all OSCE countries, having signed up both to our OSCE anti-trafficking commitments and other key international instruments, most importantly the UN Palermo Protocol, and the Council of Europe Convention on Action Against Trafficking in Human Beings.” (Eva Biaudet, OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, September 2009).²²

Like many other human rights instruments, the Convention reiterates (in Article 3) the principle that implementation of its provisions by States Parties, “in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured *without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*”.²³ Paragraph 63 of the *Explanatory Report* confirms that this principle (of non-discrimination) refers in particular to the measures to protect and promote victims' rights and that the meaning of “discrimination” in Article 3 is identical to that given to it under Article 14 of the *Council of Europe’s Convention on the Protection of Human Rights and Fundamental Freedoms* (1950).

The Convention also established a monitoring mechanism, an independent body of experts mandated to assist States in their implementation, *the Group of experts on action against trafficking in human beings* known as GRETA.²⁴ The current members of GRETA were nominated by States Parties. None of the 13 members of GRETA are from the UK as the members were elected in December 2008 before the Convention entered into force in the UK.

In February 2010 GRETA published a questionnaire to be completed by States Parties to provide information to GRETA about their implementation of the Convention. The UK’s implementation of the Convention will first be examined by GRETA during 2011.

Provisions for children

As noted above the Convention uses the UN definition of child which covers all children up to the age of 18. The Convention contains various provisions which are specific to children, regarding their protection and assistance and also the prevention of child trafficking. It confirms that procedures concerning children (or young people who might be children) must be different from those that concern adults.

With regard to identification, “When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection

²² Eva Biaudet, OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Opening Remarks at the Alliance Conference, *Successful prosecution of human trafficking – challenges and good practices*, Helsinki, 10-11 September 2008, quoted in the 2009 annual report of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, page 19.

²³ Emphasis added.

²⁴ The GRETA website is available at: www.coe.int/t/dghl/monitoring/trafficking/Docs/Monitoring/GRETA_en.asp accessed on 18 March 2010.

measures pending verification of his/her age” (Article 10.3). On the issue of protection, “as soon as an unaccompanied child is identified as a victim” (of a crime related to trafficking), States Parties are required to “provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child” (Article 10.4(a)). This requirement to appoint a legal guardian to act in the child’s best interests is in addition to the obligation imposed on the State by a separate convention, already ratified by all Council of Europe Member States, the UN *Convention on the Rights of the Child*, which requires them to ensure that, “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.²⁵

The Convention specifies that in the context of police investigations and legal proceedings, children who have been trafficked “shall be afforded special protection measures taking into account the best interests of the child” (Article 28.3), in addition to a range of measures that are suggested to protect trafficked adults involved in legal proceedings. If they are nationals of another State, children may not be returned “if there is indication, following a risk and security assessment, that such return would not be in the best interests of the child” (Article 16.7).

In the context of prevention, States Parties are required to “use...a child-sensitive approach” (Article 5.3) and to take measures to “reduce children’s vulnerability to trafficking, notably by creating a protective environment for them” (Article 5.5), to make them less vulnerable to trafficking and enable them to grow up without harm and to lead decent lives.²⁶ The requirement to create a “protective environment” for children is particularly relevant for States from where children are known to have been trafficked, but also imposes an obligation on destination States (such as the UK) to put “in place a system for monitoring and reporting abuse cases” and “programmes and services to enable child victims of trafficking to recover and reintegrate”.²⁷

UK response to trafficking

UK legislation relating to the Convention

The UK anti-trafficking legislation is not contained in a single Act and the offences concerning human trafficking and other relevant offences are to be found in numerous different laws. Following the publication of the UK *Action Plan on Tackling Human Trafficking* by the UK Government in March 2007, the Government signed the Convention the same month and ratified it in December 2008, coming into force in the UK on 1 April 2009. As is typical of most human rights treaties in the UK, this Convention has not been incorporated directly into national law, but existing legislation has been amended with the aim of ensuring consistency between UK law and obligations under the Convention.

The issue is further complicated by the fact that, the UK has devolved certain executive and legislative responsibilities to Scotland (*Scotland Act 1998*), Northern Ireland (*Northern Ireland Act 1998*) and Wales (*Government of Wales Act 2006*, replacing the *Government of Wales Act 1998*). The remits of the three vary, with only Scotland having devolved responsibility for justice and policing by the end of 2009, while all three have devolved responsibility for social services. The result is that laws and procedures vary between England, Scotland, Wales and Northern Ireland. On the issue of human trafficking, all legislation adopted in the UK’s Parliament is in force in Wales as well as England. As of the beginning of 2010, the same provisions were also in force in Northern Ireland, although sometimes contained in different Acts. A review of UK legislation relating to trafficking is contained in Appendix 2 of this report.

The Government’s Plan to tackle human trafficking

The blueprint for the UK Government’s actions to stop trafficking and to protect people who have been trafficked is the UK *Action Plan on Tackling Human Trafficking*, originally published in March 2007.²⁸ The two updates to the UK Action Plan since March 2007 have been published in July 2008²⁹ and October 2009³⁰ and consequently apply to the entire country. Their provisions are mentioned below, where relevant, when describing recent practice in the UK.

²⁵ UN *Convention on the Rights of the Child* (1989), Article 3.1. The UK signed the Convention on 19 April 1990, ratified it on 16 December 1991 and it came into force in the UK on 15 January 1992.

²⁶ Paragraph 106, *Convention on Action against Trafficking in Human Beings*, Explanatory Report.

²⁷ *Ibid.*

²⁸ The original UK *Action Plan on Tackling Human Trafficking* was published in March 2007, with updates issued in July 2008 and October 2009.

²⁹ The Home Office and Scottish Government, *Update to the UK Action Plan on Tackling Human Trafficking*, July 2008.

³⁰ The Home Office and Scottish Government, *Update to the UK Action Plan on Tackling Human Trafficking*, October 2009.

The plan is said to set “out the Government’s commitment to tackle all forms of human trafficking. It covers four key areas of: prevention; investigation/law enforcement/and prosecution; providing protection and assistance to adult victims of trafficking; and child victims”.³¹ Certain measures in the Action Plan, most notably the granting of a 45-day reflection period rather than the 30-day minimum provided for in the Convention, suggested a strong intent by the Government to not only meet the obligations but in places to exceed them in recognition of the human cost that trafficking inflicts upon its victims.

However, in researching the UK’s anti-trafficking policy and practice over the course of the first year of the Convention, the Monitoring Group found serious discrepancies between the provisions of the Convention and UK policy and practice. Further, this report contends that in key areas, most notably around the operation of the National Referral Mechanism, UK anti-trafficking policy and practice fails to meet core standards of *rule of law*.

Conclusion

This chapter offered an overview of the key obligations with which all Member States who become Parties to the Convention should comply. These fundamental obligations are the ones against which the Monitoring Group examined the UK Government’s anti-trafficking performance. It also introduced a snapshot of the UK Government’s response to human trafficking, which is further developed in chapter 3.

³¹ www.crimereduction.homeoffice.gov.uk/humantrafficking005qanda.pdf accessed 25 January 2010, page 1.

Chapter 3: The National Referral Mechanism

Origins of the UK National Referral Mechanism (NRM)

In April 2009, in order to meet its commitments at the time that the Convention entered into force in the UK, the Government introduced new procedures to examine cases of individuals presumed to be trafficked.³² The new procedures were given the title of 'National Referral Mechanism', a name borrowed from the Organisation for Security and Cooperation in Europe (OSCE) *Action Plan to Combat Trafficking in Human Beings*.

Although the term is not used in the Convention, the national referral mechanism proposal by the OSCE provides practical guidance on how to fulfil many of the obligations mentioned in the articles of the Convention described above. The 2003 OSCE Action Plan called on OSCE Participating States, which include the UK, to establish a National Referral Mechanism (NRM) "by creating a co-operative framework within which participating States fulfil their obligations to protect and promote the human rights of the victims of THB [trafficking in human beings] in co-ordination and strategic partnership with civil society and other actors working in this field".³³

OSCE advice on National Referral Mechanisms (NRMs)

According to a handbook on national referral mechanisms published in 2004,

"An NRM should incorporate:

- Guidance on how to identify and appropriately treat trafficked persons while respecting their rights and giving them power over decisions that affect their lives;
- A system to refer trafficked persons to specialized agencies offering shelter and protection from physical and psychological harm, as well as support services. Such shelter entails medical, social, and psychological support; legal services; and assistance in acquiring identification documents, as well as the facilitation of voluntary repatriation or resettlement;
- The establishment of appropriate, officially binding mechanisms designed to harmonize victim assistance with investigative and crime-prosecution efforts;
- An institutional anti-trafficking framework of multidisciplinary and cross-sector participation that enables an appropriate response to the complex nature of human trafficking and allows its monitoring and evaluation".

The handbook explains that, "At the core of every NRM is the process of locating and identifying likely victims of trafficking, who are generally known as "presumed trafficked persons". This process includes all the different organizations involved in an NRM, which should co-operate to ensure that victims are offered assistance through referral to specialized services".

On the question of ensuring "good co-operation among government agencies and civil society",³⁴ the handbook comments that:

"Effective NRMs require good co-operation between government agencies and civil society...an NRM can be an essential structure for referring trafficked persons. NRMs should develop a dynamic process to ensure participation of civil society. Internal monitoring, evaluation, and feedback should be a continuing part of NRM activities. Achieving these ends requires the involvement of a wide range of government agencies and non-governmental groups. An NRM should therefore seek to be as inclusive as possible in its membership and participation".³⁵

³² The procedures involved are described in the most recent (October 2009) update to the UK Action Plan.

³³ OSCE Permanent Council Decision No. 557, OSCE *Action Plan to Combat Trafficking in Human Beings*, PC.DEC/557, 24 July 2003, Part V.3

³⁴ Office for Democratic Institutions and Human Rights/Organization for Security and Co-operation in Europe, *National Referral Mechanisms. Joining Efforts to protect the Rights of Trafficked Persons. A Practical Handbook*, 2004, page 15, accessed on 2 March 2010 at www.osce.org/documents/odihr/2004/05/2903_en.pdf

³⁵ *Ibid.*, pages 15 and 16.

While the UK does not have a legal obligation to develop an NRM along precisely the lines that the OSCE recommended, the Government previously suggested that there was an intention by the UK authorities to develop a coordinated system of referrals along the lines of the OSCE model: *“In the longer term we will develop a national referral mechanism, as recommended by the Organisation for Security and Cooperation in Europe (OSCE), which will include adopting formal identification procedures and referral protocols”*.³⁶

It should be noted that the NRM relates only to a few of the 47 articles of the Convention (notably articles 10-14). However, in the UK the NRM has become central to the implementation of key aspects of the Convention, most notably provision of a reflection period and access to services to presumed victims of trafficking.

In many respects, the NRM developed in the UK is not based closely on the model suggested by the OSCE. However, in assessing the extent to which the UK respected the terms of the Convention during its first year in operation, a question examined in this report is whether the structure and procedures associated with the UK’s NRM have enabled it to meet the requirements of the Convention, particularly assessing whether the Mechanism was fit for purpose to perform the functions, said by the OSCE to be “at the core of every NRM”, of locating and identifying presumed trafficked persons.

UK National Referral Mechanism and ‘Competent Authorities’

The Convention uses the concept of ‘competent authorities’ in relation to those who come into contact with presumed trafficked persons and are empowered to provide services to them or to make decisions affecting them.

When the UK authorities considered what procedures to put in place to fulfil the UK’s obligations under the Convention, prior to setting up the NRM in 2009, they had choices about the level at which presumed trafficked persons were to be identified initially and the institutions which they would entrust with this task.³⁷ The UK opted to keep tight central control of identification from the first step.

Hence two separate agencies were identified as Competent Authorities: the UK Border Agency (UKBA), and the UK Human Trafficking Centre (UKHTC). It is these alone which make decisions on:

- whether a presumed victim is considered to have been trafficked;
- and whether to grant a presumed trafficked person a reflection period of up to 45 days to recover and to consider whether they want to cooperate with a police investigation.

Consequently, in the UK, the terms ‘refer’ and ‘referral’ effectively mean that the case of an individual is being submitted to these central authorities to decide on their status, not that they are being referred to a range of specialised services. This applies to everyone who is believed to have been trafficked, including UK nationals, but is particularly relevant for presumed trafficked persons who have no leave to remain in the UK, as, once granted a reflection period, they cannot legally be removed from the country for at least 45 days. Appendix 3 describes in more detail the referrals process.

While the NRM applies throughout the UK, since 2007 the UKBA has been operating under a regional structure, whereas the UKHTC does not. This means that cases identified in Northern Ireland, for example, are first referred to the UKHTC and then sent on to the regional Scotland and Northern Ireland UKBA office based in Scotland if the case has a pending immigration issue.³⁸

The National Referral Mechanism and ‘First Responders’

The UK’s NRM specifies a series of ‘First Responders’, frontline agencies and statutory bodies which come into direct contact with presumed trafficked persons and which are formally entitled to refer the cases of individuals to a Competent Authority, in the UK either UKBA or UKHTC.

³⁶ UK *Action Plan on Tackling Human Trafficking*, March 2007.

³⁷ In some European countries, such as Italy, initial identification has been carried out for some time at local level without being scrutinised by a central authority. In others, such as the Netherlands, cases are referred to a single organisation, *Coördinatiecentrum Mensenhandel* (CoMENSHEA), Human Trafficking Coordination Centre, a former NGO, that acts as a hub in the referral system and shares information about referrals, but which does not vet them or decide who should be allowed to stay in the country (www.comensha.nl).

³⁸ Interview 19 on 14 October 2009 with a statutory agency.

In the case of adults who may have been trafficked, a First Responder is a frontline agency whose staff provide support services which trafficked persons might use. This includes: police, local authorities, selected government departments such as the Crown Prosecution Service (CPS), statutory qualified Health Providers (the National Health Service, NHS) or the UKBA and designated NGOs providing support or services to trafficked persons. In the case of children, a First Responder is required to be a public body, rather than a NGO. The statutory agencies broadly equate to those envisaged by the Convention as 'competent authorities'.

In general, First Responders refer cases to the UKHTC. The UKHTC refers on to the UKBA any cases in which questions are raised about an individual's immigration status in the UK. This means that cases involving UK citizens and individuals with settlement in the UK are dealt with by the UKHTC rather than the UKBA. Citizens of other EU States and the EEA would only be referred to the UKBA if there was some question about their legal right to continue residing in the UK. In contrast, cases involving individuals from outside the EU (referred to in the UK and elsewhere in the EU as 'third country' nationals) are routinely referred to the UKBA. When the UKBA identifies an individual as a presumed trafficked person, it acts as First Responder and refers the case directly to an individual with Competent Authority decision-making powers within the UKBA.

The same official in the UKBA can review an individual's case as a Competent Authority (to decide whether an individual has been trafficked) and again to assess the same individual's subsequent asylum application – whether recognised as 'trafficked' or not.

Conclusion

This chapter provided a brief overview of the origins and functions of the NRM, given its centrality in anti-trafficking activity in the UK. The subsequent chapters will assess, based on the evidence gathered in the course of this research, how well this and other UK initiatives intended to combat human trafficking meet the obligations contained in the Convention.

Chapter 4: The NRM in practice

"I was very scared also because I got the interview [asylum screening interview] invitation letter on the day of the interview and was told immediately that transport was there to take me to the interview. I didn't have the chance to speak to a solicitor and have everything explained. I didn't know the difference between asylum and trafficking. Maybe I should have had the chance to have things explained to me. [...] I did not have a choice. All I was asked was the asylum case-owner saying her colleague could speak to me about the trafficking and if this was okay. I said it was okay".³⁹

Interpretation of certain aspects of the UK's laws defining what constitutes human trafficking has in numerous cases been left to Competent Authority officials, who function as the National Referral Mechanism. It is the contention of this report that these interpretations are frequently problematic. Such is the extent of these problems that they call into question the appropriateness of this approach for a country that values *rule of law*. Specifically the apparent discrepancies between the Competent Authority decisions and the provisions of the Convention suggest that intentionally or otherwise the NRM routinely flouts a key principle identified by Lord Bingham as being fundamental to *rule of law*, namely that "*Questions of legal right and liability should ordinarily be resolved by application of the law and not exercise of discretion*".⁴⁰ This chapter outlines this argument in greater detail.

NRM referrals and decisions in 2009

Total number of referrals

The UKHTC reported in its published statistics that between April and December 2009 the cases of 527 potential victims of trafficking had been referred to the NRM.⁴¹ This figure (527) was confirmed by the Home Office Minister responsible for anti-trafficking policy during a debate in the House of Commons on 20 January 2010.⁴²

It should be noted that these statistics do not necessarily convey any meaningful message about trafficking patterns, but only about the claims relating to people who were referred into the NRM. The statistics do not include people who did not consent to being referred into the NRM and, of course, do not include victims who were not identified. The data did not reveal what decisions were made subsequently, that is how many people were given either positive 'reasonable grounds' or positive conclusive decisions.

When a presumed trafficked person is referred to a Competent Authority, the first step in the official process is the 'reasonable grounds' decision assessment. If the Competent Authority decides there are 'reasonable grounds' to suspect that the person concerned has been trafficked, they may issue a letter of positive 'reasonable grounds' decision and the person concerned is granted a period of 45 days to recover and reflect (which can be, and sometimes is, extended), during which they should be entitled to various forms of assistance. If the initial decision is negative, the person concerned is not entitled to the protection or assistance available to trafficked persons.

The second assessment is supposed to come at the end of the reflection period, when the Competent Authority issues a conclusive decision, requiring a higher standard of proof, after the case has been looked at in greater detail. In some cases, however, such as those involving UK nationals, conclusive decisions have been made in the absence of an initial 'reasonable grounds' decision. This suggests that the question of the immigration status of a presumed trafficked person may be significant in determining how some decisions are made by Competent Authorities.

While the published data are not misleading, by themselves they are not particularly helpful in understanding how the NRM is working or how many people have been formally identified as "trafficked".

³⁹ Case number 155 submitted to the Monitoring Group with written answers from a trafficked person describing her experience of being referred through the NRM.

⁴⁰ Bingham, T., *The Rule of Law*. London, Allen Lane, 2010.

⁴¹ By 18 January 2010, the number of referrals had risen to 557.

⁴² Alan Campbell MP, Parliamentary Under-Secretary of State for the Home Department, House of Commons debates, Hansard, 20 January 2010: Column 125WH, accessed on 3 March 2010 at www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100-120/halltext/100120h0009.htm

Those referred into the NRM came from a total of 61 countries. However, by far the largest contributors were Nigeria (89 people) and China (70 people). Also noticeable was Vietnam, with 46 people, a significant proportion of whom are believed to have been children. The country with the next largest number of people referred was the UK itself, with 37, while the next three countries (in terms of the numbers of people who were referred) were all EU countries.

Out of the 527 people who were referred, 389 (74 per cent) were women or girls and 138 (26 per cent) were men or boys.

Just over 140 were said to be children (i.e. under 18) at the time they were referred (26.7 per cent of the total, but mentioned in different official sources as either 141 or 143 people), of whom approximately half (69) were below the age of 16, and half (72) were aged 16 or 17. A similar number (63) were young adults aged 18 to 20. Among the children aged under 18, 85 were girls and 58 were boys (i.e. boys accounted for 40 per cent of the children who were referred, a significantly higher proportion than among adults, where men accounted for just 20 per cent of the total). No information was available to indicate what proportion of the young adults reported being trafficked before reaching the age of 18.

The statistics were disaggregated according to the forms of exploitation that were reported: sexual exploitation, domestic servitude or forced labour (but in a significant number of cases the form of exploitation was reported as not known). A total of 193 adult women and 45 girls were reported to have been trafficked for sexual exploitation, accounting for 45 per cent of all the referrals. Two men and two boys were reported to have been trafficked for sexual purposes. A total of 73 adult women and 12 girls were referred as presumed trafficked for domestic servitude, accounting for 16 per cent of all the referrals. Seven men and seven boys were reported to have been trafficked for domestic servitude. Referrals of presumed trafficked persons for forced labour showed a different gender break-down, with 67 adult men and 34 boys, and 27 adult women and 13 girls referred.

The published statistics also indicated which agencies acted as First Responders. Almost half the referrals (47 per cent) came from the UKBA and 30 per cent from the police. Just 12 per cent came from NGOs (all of whom are likely to have been adults, as some designated NGOs act as First Responders for adults but do not do so for children) and 11 per cent from local authorities (most of whom are likely to have been children, for the same reason).

Trafficked persons who were not referred to the NRM

The Monitoring Group received information about more than 130 individuals who were identified as probable victims of trafficking by support organisations or First Responders between 1 April 2009 and 1 April 2010 and whose cases were not referred to the NRM. This was for a variety of reasons, but primarily because they did not see the benefit of being referred or were afraid that it would have adverse impact on them because of their immigration status.

This figure does not indicate the total number of presumed trafficked persons who were not the subject of a referral, but only those that became known to the Monitoring Group. No other data are known to have been collected about the numbers involved.

These findings raise some questions, most specifically: How fit for purpose is the NRM to facilitate the protection and assistance to victims of trafficking and to help ensure the UK is meeting its obligations under the Convention? How successful is the current system in identifying victims and improving knowledge about the extent of trafficking in the UK?

Positive 'reasonable grounds' or conclusive decisions in 2009⁴³

Information about the number of referrals which resulted in 'reasonable grounds' or conclusive decisions does not come from published information, but from requests made under the *Freedom of Information*

⁴³ Only partial information was available about the places where individuals were located when they were the subject of referrals to the NRM. For example, there were reported to have been 11 referrals from Wales during 2009 (*Freedom of Information* request 20100037 by BAWSO, inquiring about number of referrals to the NRM from Wales, answered 22 February 2010). In Scotland, at least eight presumed trafficked persons received positive 'reasonable grounds' decisions in 2009, while in Northern Ireland at least two received positive conclusive decisions (*Freedom of Information* request 20100161 by Brent Law Centre, inquiring about the location of First Responders whose referrals resulted in a conclusive decision during 2009, answered 10 March 2010).

Act 2000, statements in Parliament and interviews. Unfortunately, the information provided refers to different periods of time, making it somewhat difficult to compare to the official data mentioned in the previous section.

In February 2010, the Monitoring Group was told, in response to a *Freedom of Information* request, that, out of 557 referrals to the NRM by 18 January 2010:

- 309 received positive 'reasonable grounds' decisions;
- 146 received negative 'reasonable grounds' decisions.

This implies that a total of 455 decisions had been made on the 557 referrals. There were various reasons why 102 other cases had not been the subject of a decision; 66 of them appeared to be long overdue (despite the fact decisions were expected to be made within five days of a Competent Authority receiving a referral), though the amount of time involved was not clear.

At the next stage, out of the 309 people who received a positive 'reasonable grounds' decisions:

- 89 were given a positive conclusive decision (i.e. were identified definitively as 'trafficked');
- 50 received negative decisions and were told the Competent Authority did not consider them to have been trafficked.

A further 151 cases were reported to be still pending and 19 of the people involved had been reported missing, so were not to be the subject of further decisions.

In response to a Parliamentary Question in January 2010, the Minister of State for Borders and Immigration reported that 85 (rather than 89) had received conclusive decisions, of whom 30 had been granted a residence permit or some other form of leave to remain in the UK, while 40 were nationals of either the UK or another EU State and did not require a residence permit.⁴⁴

In October 2009 the UK authorities had said that approximately 80 per cent of referrals during the first three months had been given a positive decision and that this was in line with their predictions.⁴⁵ However, the information provided in February 2010 painted a different picture.

Only 55 per cent of the total initial referrals were reported to have been met with a positive 'reasonable grounds' decision. A much smaller proportion of 16 per cent of the total number of initial referrals had been given a positive conclusive decision, although these accounted for 29 per cent of all those who had received a positive 'reasonable grounds' decision.

Whether the figure is 16 or 29 per cent of the total, the proportions that met with a positive decision appeared to be much smaller than the 80 per cent of positive decisions anticipated by the authorities in the October 2009 *Update to the UK Action Plan on Tackling Human Trafficking*. These statistics suggest one of two things:

- They could indicate that, in the first nine months of its operations, frontline agencies that made referrals in their capacity as First Responders were over optimistic or even naïve in their initial identification of people as trafficked, and that more than 70 per cent of the people whom they referred because they suspected they had been trafficked had not been trafficked;
- Or they indicate that the criteria used to assess referrals were inappropriately stringent and that the threshold for being identified as a presumed trafficked person is significantly higher than initially intended.

⁴⁴ Phil Woolas MP, Minister of State for Borders and Immigration, House of Commons debates, Hansard, 12 January 2010: Column 853W, accessed on 19 March 2010 at www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100112/text/100112w000-9.htm#10011271001149

⁴⁵ *Update to the UK Action Plan on Tackling Human Trafficking*, October 2009, page 21.

Patterns in decisions relating to the place of origin of people who were referred to the NRM

A *Freedom of Information* request,⁴⁶ about the countries of origin of adults and children who were the subject of referrals from April until the end of November 2009, revealed that the 477 people who had been the subject of referrals in this period came from 62 countries⁴⁷ and that they included 34 people from the UK (presumably victims of internal trafficking). Among the UK cases, 26 had already received a positive conclusive decision, while only three of these referrals had been turned down. As the immigration status of UK citizens was not in doubt, most had been given a conclusive decision without receiving a 'reasonable grounds' decision.

Table 1 NRM decisions according to origin of person referred

Referrals and decisions by region - 1 April to 30 November 2009	
Total number of referrals – UK nationals	34
Total number of referrals – nationals of EU state other than UK	72
Total number of referrals – Rest of the World (excluding EU)	371
Sub-total: total number of referrals	477
Results of 'reasonable grounds decisions'	
Positive decisions – UK nationals	5
Positive decisions – nationals of EU state other than UK	20
Positive decisions – Rest of the World (excluding EU)	106
Sub-total: total number of positive reasonable grounds decisions	131
Results of conclusive decisions	
Positive decisions – UK nationals	26
Positive decisions – nationals of EU state other than UK	21
Positive decisions – Rest of the World (excluding EU)	44
Sub-total: total number of positive conclusive decisions	91

The "positive identification" rate of UK citizens (of 76 per cent) contrasts with the "positive identification" rate of cases as a whole (19 per cent). The "positive identification" rate of nationals from other EU states was 29.2 per cent, while that of nationals from countries outside the EU was only 11.9 per cent.

These different rates should not be interpreted as evidence per se of discrimination against people originating outside the EU whose cases were submitted to the NRM. However, they are startling, not least between EU nationals and non-EU nationals. On this basis alone, they merit further investigation by the Home Office, to check that individuals from outside the EU are not the subject of discrimination in the decision-making process.⁴⁸ Given the questions that this analysis prompts the next section explores in more detail the process by which the NRM seeks to identify victims of trafficking.

⁴⁶ Freedom of Information request 20100018 by Anti-Slavery International, inquiring about the nationalities of individuals referred to the NRM and the decisions received, answered 20 January 2010.

⁴⁷ Records provided under the *Freedom of Information* request referred to one trafficked person from the Republic of Congo and another from the neighbouring Democratic Republic of Congo. Statistics published on the UKHTC website referred to both these individuals as coming from the same country ('Congo') and suggested that the presumed trafficked persons whose cases were referred to the NRM between 1 April 2009 and 31 December 2009 came from a total of 61 countries.

⁴⁸ Concerned that there might be evidence that nationals from the countries accounting for the largest number of referrals might have received a disproportionate number of negative decisions, the Monitoring Group checked the "positive identification" rates for nationals from the three countries concerned. In total, the nationals from these three countries who received positive conclusive decisions accounted for 26 out of the 44 trafficked persons from the 'Rest of the World' who received positive conclusive decisions. Compared to the average of 11.9 per cent of 'Rest of the World' trafficked persons who received positive conclusive decisions, the proportions of Nigerians, Chinese and Vietnamese who received positive conclusive decisions were 14.8 per cent, 14.1 per cent and 11.9 per cent respectively of the total number from each country whose cases were referred, i.e. in two out of the three countries the success rates were slightly higher than average.

The process of identification

The Convention requires States to ensure the necessary mechanism is in place as well as the availability of competent personnel for the identification process. The identification procedure is required to “ensure that, if the competent authorities have reasonable grounds to believe that a person has been a victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence...has been completed by the competent authorities and shall likewise ensure that that person receives...assistance” (Article 10.2).

Different statutory organisations are required to cooperate with each other in the process of identification, as well as with victim support agencies. It also establishes that special procedures are to be in place to facilitate the identification of trafficked children, notably a presumption, in cases “[w]hen the age of the victim is uncertain and there are reasons to believe that the victim is a child” (Article 10.3) that he or she is a child, who will be protected accordingly.

The Convention does not contain a blueprint for the identification process. Like many other countries, the UK has drawn on what it knows of those who have already been trafficked into the UK to draw up lists of ‘indicators’, the signs that suggest, directly or indirectly, that a person might be or have been under the control of traffickers.

Based on these indicators First Responders are expected to obtain enough information about a presumed trafficked person to refer the case within a matter of days. This referral must convince the Competent Authority that there are ‘reasonable grounds’ to believe the person was trafficked, and thus that the person should be allowed time to recover. This process does not follow logically from what most organisations in the Monitoring Group understand to be typical patterns of disclosure for trafficked persons. For example it is known that trafficked persons are likely in many cases to provide incomplete, inaccurate or misleading information about their experiences, at least initially, due to mistrust of authorities or instruction by traffickers to provide an untrue account. Studies on the mental health impact of trafficking also indicate high levels of post-traumatic stress disorder (PTSD) and anxiety, both of which may result in difficulty with recollection and avoidance of traumatic memories.⁴⁹ The purpose of a reflection period, insufficient as this may be for full recovery in the case of PTSD, is to allow trafficked persons to begin to recover, to assess their circumstances and options, and to make an informed decision about if or to what extent they wish to disclose their experience to others.

First Responders are required to specify which indicators are relevant in a case in the referral forms submitted to the Competent Authorities, making the indicators a substantial part of the identification process. Some police forces have used lists of indicators to design their own protocol for interviews with people who may have been trafficked: pre-set questions or a questionnaire to obtain information about indicators, such as “Where is your passport? Do you have your passport? Can you get your passport? Can you leave? When did you last leave this house? Do you have any friends outside? Do you have access to telephones or any other forms of communication?”⁵⁰ The first step is to find out if someone may be a presumed trafficked person, while the second step involves more detailed forensic interviews about possible crimes committed against a trafficked person.

There are various challenges to the use of too formulaic an approach to identification of trafficked persons. The main one is that many trafficked persons are not prepared or able to disclose what has happened to them during their initial contact with frontline agencies or to give full or truthful responses to the direct questions that are put to them.

Threats and control by the trafficker exert significant influence over a person’s ability to disclose experiences of trafficking, servitude and abuse. Other factors, generally related to psychological trauma, can similarly impact upon an individual’s ability to disclose. Feelings of shame, fear of stigmatisation, necessary avoidance of potential re-traumatisation or an upsurge in trauma-related symptoms can all fuel a need to keep a history of trauma secret. It is widely acknowledged that speaking of traumatic incidents outside a relationship of trust and safety can lead to deterioration in mental health and an augmentation of psychological trauma-related symptoms.

⁴⁹ Zimmerman, C. et al, *Stolen smiles. The physical and psychological health consequences of women and adolescents trafficked in Europe*, The London School of Hygiene and Tropical Medicine, 2006.

⁵⁰ Interview 45 on 11 November 2009 with law enforcement.

Without understanding these fundamental issues associated with trafficking there is a high risk that those referred to a Competent Authority receive a negative decision and are not recognised as a presumed trafficked person, simply because, when they had been in contact with an official in a position of authority, they had not made themselves known as a victim. We would argue strongly that this flaw in the practice of the NRM is illustrated by the text of the following Competent Authority decision:

“Your claim to have been forced to sleep with men against your will, that you were ‘extremely unhappy’ and ‘always crying’ is considered to be inconsistent with your claim not to have taken advantage of the ample opportunity you had to seek help from the police on the numerous occasions you left the house and the occasion when you took the time to visit the police station. Your credibility has been damaged as a result and it is not accepted that you were trafficked to the UK or forced to work as a prostitute by traffickers as you claim.”⁵¹

To use indicators effectively to identify possible trafficked persons in the first place, relevant agencies need to be trained to properly understand trafficking to enable them to appropriately use indicators and to know how to respond appropriately when they spot a possible case of trafficking. For example, the fact that someone’s passport had been confiscated (which is a criminal offence in itself) should draw the attention of the authorities to view the case as potentially involving human trafficking. Cases of reports of abuse in domestic servitude should also be automatically recognised as criminal in nature and also indicate the possibility of forced labour. The attitude conveyed in the following quote must be recognised as representative of a desperately flawed understanding of trafficking:

“Sometimes domestic workers are brought here on false pretences, but they are not illegal. No domestic worker is a trafficked victim, because they are legal. They may be victims of many crimes, abuse, locked in, exploitation, but none had been forced, not were brought over under force. Until they come here they don’t run away. They run away here because they want to live a Western life, it is more attractive, more freedom”.⁵²

Delays in decisions about referrals

While Competent Authorities are supposed to respond to initial referrals within five days and to make further inquiries during a 45-day reflection delay, in practice cases have been reported in which it took far longer for the individual, First Responders or the organisations supporting a presumed trafficked person to learn that a positive ‘reasonable grounds’ decision had been made. In one case, a support organisation only learnt this towards the end of a person’s 45-day reflection period and was only then asked by the Competent Authority if they wanted to submit further evidence to show that the person had been trafficked. According to information provided to the Monitoring Group by one NGO who provides support to people who had been trafficked, in one case a Competent Authority had explained delays in responding to a referral by saying that the official who was responsible for the case had gone on holiday and the agency could not provide any feedback in the official’s absence.⁵³

Information provided by the UKHTC in January 2010 in response to a separate *Freedom of Information* request⁵⁴ gave some idea of how long people who were the subject of referrals were waiting to be notified of decisions. Among the 307 who received a positive ‘reasonable grounds’ decision during 2009, information was available about the time that it took for 139 of them to receive further news about a conclusive decision (whether the decision was positive or negative): 23 people were notified of a response within 45 days (the intended length of a reflection period), while a further 74 had to wait between 46 days (a month and a half) and three months.

A separate *Freedom of Information* request⁵⁵ indicated that there were significant delays in assessing the cases of 66 of the 102 people who were referred to the NRM in 2009 but who had not been notified of a ‘reasonable grounds’ decision by the end of 2009.

⁵¹ Competent Authority letter number 16 submitted to the Monitoring Group in January 2010 and issued between September 2009 and January 2010.

⁵² Interview 3 on 17 September 2009 with law enforcement.

⁵³ Interview 15 on 7 October 2009 with an NGO – service provider.

⁵⁴ *Freedom of Information* request 20100017 by the POPPY Project, inquiring about decision timelines under the NRM, answered 20 January 2010.

⁵⁵ *Freedom of Information* request 20100024 by Kalayaan, inquiring about the number of decisions pending at reasonable and conclusive grounds decision stage, answered 8 February 2010.

If initial 'reasonable grounds' decisions were intended to involve substantial scrutiny of a presumed trafficked person's experience, it might be appropriate for the process to take more than five days. However, such decisions were intended to be made rapidly (using the principle 'I suspect, but cannot prove'), precisely so that the individuals involved could obtain the practical assistance they required to feel relatively secure and to start to recover from their experience. It looks as though the initial process of reaching 'reasonable grounds' decisions was more drawn out than the authorities themselves had anticipated. This created particular complications for organisations providing accommodation and other practical assistance to presumed trafficked persons, as initially, in most cases, they could not obtain official funding to cover the costs incurred before a 'reasonable grounds' decision was made.⁵⁶

It is reasonable to conclude that the Competent Authorities found it difficult to make decisions on a significant proportion of referrals. It is questionable whether keeping persons who were referred as persons whom the First Responders considered had been subject to serious human rights violations and likely victims of a serious crime waiting a long time for a decision, complies with the human rights approach laid down by the Convention; or whether it is consistent with the victim-centred approach that is the stated intention of the UK Government.

The issue of consent

In assessing the appropriateness of the procedures adopted in the UK and whether they conform with the Convention, a significant question is whether the nature of the system itself puts off a significant proportion of the intended beneficiaries from using it; in which case it would not be fit for purpose.

In 2009, there were examples of individuals who had been trafficked into forced labour or servitude and who still had a valid visa to stay and work in the UK declined to allow their cases to be referred. The Monitoring Group research found from one of the NGOs it consulted that, in the period April 2009 – April 2010, the NGO staff had identified 72 presumed trafficked persons, but of these only 22 had accepted to be referred to the NRM. The Monitoring Group gathered further information about four of these cases, where the individuals had stated that they did not want to be referred through the NRM because they had either been able to recover their passports from their employers or the embassies had issued them with new ones and they had found new jobs or were looking for one.⁵⁷ Several others had explained to the NGO staff that they were under pressure to start earning money, precisely because they had to repay debts incurred when they came to the UK in the first place.⁵⁸ Others have reported that they fear the consequences of being brought to the attention of the authorities because of their immigration status – a paradoxical situation, as it concerns precisely the same fear that traffickers often use to control their victims.⁵⁹

It is of great concern that the consent of children is not sought prior to their referral and that no-one is required to represent their best interests at this stage, for children, like adults, are only likely to want their case referred to the NRM if it is in their best interests. One solution here would be to appoint a legal guardian at an early stage, before a child's case is referred to the NRM.

Considering the credibility of presumed trafficked persons when making 'reasonable grounds' and conclusive decisions

UKBA staff are trained to focus on the credibility of asylum requests. The importance of credibility is also emphasised to both UKBA and UKHTC staff acting as a Competent Authority.

The Monitoring Group argue that focusing on credibility at an early stage in the identification of trafficked persons is inappropriate when they have only recently escaped the control of a trafficker or exploiter. It is well established that trafficked persons do not always reveal the truth about their experiences when first questioned, particularly by anyone in authority. This is mentioned in the guidance given to the authorities.⁶⁰

⁵⁶ The Monitoring Group learnt that these shortcomings were raised and practices have changed as a result, with officially funded service providers now able to obtain funds for the period between the date a referral is made and the date a decision is issued by the Competent Authority regardless of the time this may take.

⁵⁷ Cases 11, 12, 13 and 14 of the Monitoring Group database submitted in the period September 2009 – January 2010.

⁵⁸ Informal conversation with NGO staff in October 2009.

⁵⁹ *Ibid.*

⁶⁰ Criminal Justice System, 'Specific arrangements and advice for Competent Authorities', *Trafficking Toolkit*, London, 2009, page 41.

Further, people who have been trafficked are often scared of not being believed. Indeed, many have been told by their traffickers that they will not be believed by officials in the UK. So, to be subjected to any procedure which suggests to them early on that they are not being believed is inappropriate. This undermines a person's trust in the authorities and is likely to inhibit them from collaborating with police investigations and criminal proceedings. Clearly, this creates a dilemma for anyone (or any procedure) vetting the cases of presumed trafficked persons: on the one hand it is necessary to vet the credibility of the assertions made by a presumed trafficked person as part of making a decision on the case; on the other hand, focusing on credibility too early on is likely to sabotage the purpose of the system, if an incomplete or partially false version of events is dismissed as not credible.

The concept of a reflection period was designed to resolve this dilemma by allowing presumed trafficked persons a period to recover, before they were required to decide whether to make statements to the police or other officials.⁶¹ However, by requiring referrals to be made within a very short time (five days) and scrutinising the credibility of the information contained in these referrals, the procedures of the UK's NRM has undermined the purpose of a reflection period.

Interpretation of who is a 'victim of trafficking'

The quotes below illustrate how one or more of the issues mentioned above are reflected in decisions taken by the current Competent Authorities. They are taken from Competent Authority letters and testify to a lack of understanding of what trafficking is, how control is exercised over the victim and the consequences on victims' conduct:

"You have stated that [...] your boyfriend 'forced' you to have sexual intercourse with other men. You have stated that during this time you were allowed to leave the house to go to the shops. However you made no effort to escape or approach the authorities in the United Kingdom during this time. It is considered that had you been exploited as your claim you would have seized the first opportunity to escape your boyfriend".⁶²

The final sentence shows a clear lack of familiarity with trafficking cases. This level of misunderstanding was unfortunately not an isolated case, unique to a single decision maker or a single case, as the following statements from two other letters corroborate:

"It is noted that you have highlighted numerous incidents of non-consensual sex [...] and some instants of violence. [...] Although this experiences [sic] are extremely unpleasant it is considered that this treatment [...] does not amount to trafficking in your case".⁶³

"It is acknowledged that you may suffer some longer-term effects as a consequence of the experience you may have had. Ultimately, however, you have been alive for almost [...] years, of which [...] months you have spent with the previous employer. You have also spent nearly [...] months, more than twice the length of your claimed exploitation, free of any restriction on your freedom, in which time you have made friends and had access to the support and assistance provided by [...]".⁶⁴

In addition to attitudes represented in the above quoted letters which indicate a failure to understand key aspects of trafficking, it is policy in the UK for Competent Authorities to decline to identify, as trafficked persons, individuals who have indeed been trafficked, when they were trafficked many months or several years ago. Guidance to Competent Authority personnel advises them, when considering how to make a

⁶¹ The OSCE Handbook recommends "A particularly effective way to promote self-identification of victims of trafficking is to allow for a "reflection delay", a period of time in which the presumed trafficked person is referred for services and counselling, without having to make an immediate statement to police on her or his status. This enables the presumed trafficked person to receive appropriate support and allows them to make informed decisions", ODIHR/OSCE, National Referral Mechanisms. *Joining Efforts to protect the Rights of Trafficked Persons. A Practical Handbook*, 2004, page 64, accessed on 2 March 2010 at www.osce.org/documents/odihhr/2004/05/2903_en.pdf

⁶² Competent Authority letter number 19 submitted to the Monitoring Group in January 2010 and issued between April 2009 – August 2009.

⁶³ Competent Authority letter number 14 submitted to the Monitoring Group in January 2010 and issued between April 2009 and August 2009.

⁶⁴ Competent Authority letter number 20 submitted to the Monitoring Group in January 2010 and issued between September 2009 – January 2010.

decision, “to consider whether: (i) the person was under the influence (either directly or indirectly) of traffickers at the point at which they came to your attention”.⁶⁵

The same instruction has been reiterated elsewhere and was the basis for a series of negative decisions by Competent Authorities during 2009.

In the letters that the Competent Authorities use to communicate their decisions to the presumed trafficked persons, their conclusions state: “...you are/are not a victim of trafficking for the purposes of the Convention”.⁶⁶

These conclusions and the policy guiding them contradict the Convention. The Convention defines as a victim of trafficking someone who has been subject to acts as defined in its definition: ‘Victim’ shall mean any natural person who is subject to trafficking in human beings as defined in this article [i.e. in the definition of trafficking].⁶⁷ These acts are criminal offences. Anyone who has been subject to the crime of trafficking should be considered a victim, without additional conditions attached.

The Convention does not place any time limits on when someone ceases to be a victim of trafficking. In acknowledging who is a victim of a crime, it does not differentiate between those who need a reflection period or assistance and those who do not.

In numerous cases the Competent Authority concluded:

*“Your account is consistent with that of a person who has been trafficked.....but you have not reached the threshold of reasonable grounds to believe that you are a victim of trafficking for the purposes of the convention”.*⁶⁸

Or

*“Even if it was accepted that you had been trafficked from to the UK, and held against your will and forced to....it is not accepted that you currently qualify as a ‘victim’ of trafficking for the purposes of the Convention”.*⁶⁹

These conclusions are clearly contradicting the Convention. This recurrent discrepancy between the provisions of the Convention and the reasoning behind the decisions of the Competent Authorities is the basis of our argument that the practice of the NRM violates a fundamental principle of rule of law, specifically that “Questions of legal right and liability should ordinarily be resolved by application of the law and not exercise of discretion”.⁷⁰

The purposes of the Convention, as stated in Article 1 are to prevent and combat trafficking, to protect the human rights of victims, and to promote international cooperation against trafficking. Under the Convention, anyone who has been subject to the crime of trafficking is a victim; the treaty does not place any time limits with regards to the occurrence of the crime of trafficking. The Convention places emphasis on the moment and process of identification. In other words, identification of victims is the determining factor in learning about the crime of trafficking being committed. Given this it would appear these conclusions are also violating a further principle identified by Lord Bingham (2010) as fundamental to *rule of law*, namely that “Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably”.⁷¹

⁶⁵ UKBA, *Supplementary guidance for deciding if an individual is eligible for the provisions of the Council of Europe Convention on Action against Trafficking in Human Beings*, July 2009, Paragraph 10.

⁶⁶ Competent Authority letters submitted to the Monitoring Group between September 2009 – January 2010.

⁶⁷ Article 4e of the Convention.

⁶⁸ Competent Authority letter number 25 submitted to the Monitoring Group in January 2010 and issued between September 2009 and January 2010.

⁶⁹ Competent Authority letter number 26 submitted to the Monitoring Group in January 2010 and issued between September 2009 and January 2010.

⁷⁰ Bingham, T., *The Rule of Law*. London, Allen Lane, 2010.

⁷¹ *Ibid.*

In defining 'victim' of trafficking, the Convention does not differentiate between those who no longer need a reflection period or some form of assistance, and those who are in need of the forms of assistance and protection under Chapter III of the Convention. The Convention is governed strictly by a non-discrimination principle. It states that those subject to the acts of trafficking are victims of trafficking. Anyone who has been trafficked, regardless of their current immigration status, or the fact that they have not been under the control of the trafficker when identified as a potential victim of trafficking, should be considered a victim of trafficking.

Policy that restricts the definition of "victim" only to those who, when identified, fall under certain categories, is not consistent with the Convention. Even though such trafficked persons might not be in need of immediate assistance, such as shelter or a reflection period, they still have entitlements under the Convention, and are victims of the crime of trafficking. In particular, they are still entitled to "*assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings*".⁷² Similarly, as victims of crime, they have a right to seek compensation and might be in need of protection or counselling.

This is particularly relevant in the perspective of the obligation of the UK to prosecute traffickers and combat trafficking. Even some time after they have escaped their traffickers, victims might possess valuable information that could lead to investigation. Traffickers whose enterprise has not been disrupted may be continuing to exploit others.

As there are no time limits on human trafficking offences in the UK, a suspected trafficker can still be prosecuted even if the offence occurred several years ago.

As indicated above, the Convention does not provide a blueprint for the process to be followed in making an assessment that there are "reasonable grounds to believe that a person has been victim of trafficking in human beings" (Article 10.2), but specifies that, when there are reasonable grounds for this assessment, the person concerned "shall not be removed from its territory until the identification process" has been completed and shall ensure the person receives specified forms of assistance. Article 13.1 describes the period for "recovery and reflection" to which such presumed trafficked persons are entitled:

"Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned. During this period, the Parties shall authorise the persons concerned to stay in their territory".

It is important to highlight this fundamental flaw in the UK's system for making decisions on cases of presumed trafficked persons, which we argue is a violation of the Convention. Under the terms of Article 13.1, a reflection period should allow a presumed trafficked person time either for recovery and escape from traffickers **or** to take an informed decision whether to cooperate with the 'competent authorities'. So, the policy and practice in the UK of making negative 'reasonable grounds' decisions in cases where a trafficked person has already escaped the influence of traffickers has the effect of violating the Convention's provisions on a reflection period. The wording below is representative of the various instances that the Monitoring Group has recurrently found in the letters submitted:

"It is considered that whilst a positive reasonable grounds decision was made on your case in 2008 a considerable amount of time has lapsed, over a year and a half in which time you have also provided supporting documentation that you have taken up employment [...]. Therefore it is considered that you have overcome the difficulties that you encountered for a short period of 3 months in 2008 and have overcome any trauma you may have suffered as a result [...] Therefore a conclusive decision has been made that you [are] [...] not a victim of trafficking".⁷³

⁷² Article 12 1e of the Convention.

⁷³ Competent Authority letter number 22 submitted to the Monitoring Group in January 2010 and issued between September 2009 – January 2010.

The implications of an absence of any right of appeal

Although the NRM allows the two agencies that are Competent Authorities to review the cases of individuals who are referred on two occasions (the reasonable grounds and conclusive stages), the individuals concerned have no right of formal appeal or review either to challenge a decision or to have it reviewed by an independent authority.

The Convention does not call specifically for an appeal procedure to be available. However, considering the impact that the decisions being made have on the lives and safety of people who have been referred, it is inappropriate that there is no opportunity for independent formal review.⁷⁴ In view of the large proportion of people referred to the NRM during 2009 who did not receive positive decisions, it is particularly concerning, when the above evidence indicates significant errors in law and fact routinely occurring in the course of the functioning of the NRM.

First Responders have questioned the quality of some negative decisions and expressed a fear that cases have been turned down inappropriately (i.e. people who have, in their opinion, been trafficked have not been identified as such). Along with legal representatives and others, they suggested that decisions by Competent Authorities ought to be open to some form of review. Some questioned whether the absence of a formal appeal or review procedure was consistent with the right to an effective remedy, guaranteed by the Council of Europe's *Convention for the Protection of Human Rights and Fundamental Freedoms* (Article 13).

Lawyers advising presumed trafficked persons are aware that they can call for an administrative decision (by a Competent Authority) to be submitted to Judicial Review (by the Administrative Court). However, this is potentially an expensive option and permission for a Judicial Review would only be given when no other remedy is available (in some cases there may be a question as to whether the right of appeal against refusal of asylum provides a sufficient remedy). Further, a Judicial Review is designed to supervise administrative decision-making and determine whether the decision-maker acted lawfully in reaching the decision, and is thus not a substitute for an appeal on the merits of the decision, matters of both law and fact.

It is only if a presumed trafficked person who has received a negative decision asks for a Judicial Review that the organisation providing them with accommodation or other assistance can continue to obtain public funding to meet these costs. This creates an incentive to seek Judicial Review, even though this is an expensive option. The issue of appeal and review is complicated because in cases involving people who are not EU nationals, identification as a trafficked person may be so closely tied up with immigration status and asylum applications.

In the short-term, a review by the Home Office or other government authority of the way the NRM functioned during its first year of operation is essential. Such a review should take into account that the Council of Europe *Convention for the Protection of Human Rights and Fundamental Freedoms* guarantees the right to effective remedy.

Obstacles to identification in the NRM

From interviews with professionals from a range of agencies, some statutory and some non-governmental, and from a review of cases, the Monitoring Group argues that there are a number of fundamental obstacles at work in the NRM process to identifying people who have been trafficked. These included the following:

1. A failure to apply the definition of trafficking correctly

- Policy that guides the definition of who is a victim contradicts the Convention

2. A failure to understand what constitutes trafficking

- Disbelief that certain practices constitute trafficking;
- Lack of understanding of the complexities of trafficking;
- Prejudice and discrimination against particular groups at institutional and individual levels.

⁷⁴ A report issued by the Government in 2004 points out that, "...in a democracy ruled by law, and under a government committed to high quality and responsive public services, simply appealing to a department's sense of fairness is not, and has never been, enough. There has to be redress beyond the department." Department for Constitutional Affairs, *Transforming Public Services: Complaints, Redress and Tribunals*, July 2004, section 3.13.

3. Lack of familiarity with techniques to identify trafficked persons

- Lack of awareness or knowledge and skills among frontline practitioners and law enforcement officials;
- Failure to use the indicators that signal a possible case of trafficking;
- No knowledge or implementation of standard operating procedures or other protocols that have been introduced to identify trafficked persons;
- No disclosure from potential victims of trafficking or, when disclosure occurs, stories are not believed;

4. Lack of training

- Formal training is still insufficient and tends to be delivered in the form of e-learning or distance learning courses, or short 1-day courses, which is considered by some to be inadequate;
- There has not yet been an evaluation of the training packages that are available.

5. Insufficient coordination between different agencies

- Lack of cooperation and communication between agencies;
- In some agencies, no specialised focal points have been appointed for others to contact.

6. Management issues

- Conflicting priorities between management and frontline staff;
- A lack of overall coordination of the referral system for trafficked persons, including the National Referral Mechanism;
- Failure to empower frontline practitioners to act on the basis of their knowledge;
- Expertise is lost from certain agencies on account of the high turnover of staff;
- Information does not trickle down to frontline law enforcement officials;
- Allocation of resources and budget priorities.

The identification of children can pose additional complexities. These are addressed in the following chapter and in appendices 4 and 5.

Conclusion

This chapter presented the evidence which demonstrates the UK Government is not yet meeting its obligations under the Convention by specifically reviewing how the NRM operates. The Monitoring Group has identified major causes for concern with respect to the NRM structure and functioning, including, among others: the way in which the UK Government has interpreted who is a 'victim of trafficking', the quality of decisions made by Competent Authorities, the failure to provide the individuals concerned with a right to have decisions formally and independently reviewed, the fact that the NRM is failing to contribute to the understanding of the extent of trafficking in the UK and it is not facilitating the protection and assistance to many presumed trafficked persons as they choose not to be referred because they see no benefit in the NRM or are afraid of it having negative impact on them. Chapter 5 reviews the evidence gathered with respect to how the implementation of the Convention in relation to the protection and safeguarding of children who have been trafficked into the UK.

Chapter 5: Decisions by UK authorities concerning children presumed to have been trafficked

Standards set by the Convention and International Standards

As far as children are concerned, the Convention specifies that, in the context of police investigations and legal proceedings (such as trials and pre-trial hearings), children who have been trafficked “shall be afforded special protection measures taking into account the best interests of the child” (Article 28.3). If they are nationals of another State, children may not be returned, “if there is indication, following a risk and security assessment, that such return would not be in the best interests of the child” (Article 16.7). The UK authorities are consequently under an obligation to carry out a risk and security assessment when considering a child’s possible return to her or his country of origin (whether voluntary or not), in addition to any assessments of risk related to the child’s situation in the UK.

With respect to both trafficked children and other unaccompanied or separated children, international standards call for a ‘durable solution’ to be made for each child. Once again, the principles to be observed in deciding on a durable solution are set out by the Committee on the Rights of the Child.⁷⁵ They emphasise that:

- the best interests of the child must be a primary consideration in all actions (and decisions) affecting such children (including children who are presumed to have been trafficked);
- the children themselves must be consulted in the process and their views taken into account in accordance with their age and maturity; and
- the specific risks facing a child who is returned to her or his country of origin must be the subject of a formal risk assessment that provides the findings to those responsible for deciding on a durable solution for the child;
- a legal guardian or advisor should be appointed as soon as a child is identified as unaccompanied or separated, not just if he or she is suspected of having been trafficked.

Committee on the Rights of the Child on the appointment of a guardian

“States should appoint a guardian or adviser as soon as the unaccompanied or separated child is identified...The guardian should be consulted and informed regarding all actions taken in relation to the child. The guardian should have the authority to be present in all planning and decision-making processes, including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution”.⁷⁶

“...a child should only be referred to asylum or other procedures after the appointment of a guardian”. When referred to asylum procedures, the child “should also be provided with a legal representative in addition to a guardian”.⁷⁷

With respect to the protection of children who have specifically been trafficked, the UN Children’s Fund (UNICEF) issued a set of *Guidelines for Protection of the Rights of Children Victims of Trafficking* in 2003.⁷⁸ They emphasise that government agencies and other institutions involved in making decisions about trafficked children must make the best interests of the child concerned a primary consideration in all decisions or actions affecting a child.

The Guidelines cover 11 issues:

1. identification, including presumption of age;
2. appointing a guardian for each trafficked child;

⁷⁵ Committee on the Rights of the Child, *Treatment of unaccompanied and separated children outside their country of origin*, General Comment No. 6, UN document CRC/GC/2005/6, 1 September 2005, accessed on 11 March 2010 at [www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CRC.GC.2005.6.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2005.6.En?OpenDocument).

⁷⁶ *Ibid.*, paragraph 33.

⁷⁷ *Ibid.*, paragraph 21.

⁷⁸ These were designed initially for use especially in Southeast Europe. The text of these Guidelines can be found in UNICEF, *Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe*, Geneva, 2006, accessed at www.unicef.org/ceecis/protection_4440.html. A revised version of the Guidelines, amended for use throughout the world, added two points: one concerning responsibility for meeting the costs related to the case of a trafficked child who is identified in a country other than her/his own; and a second concerning the significance of data collection and research (for understanding the realities of child trafficking in a particular location).

3. questioning by the authorities;
4. referral to appropriate services and inter-agency coordination;
5. interim care and protection, including accommodation in a safe place and regularisation of a foreign child's immigration status;
6. regularisation of a child's status in a country other than their own;
7. individual case assessment, including risk assessment and identification of what UNICEF calls a 'durable solution';
8. implementing a durable solution, including local integration or a possible return to a child's country of origin;
9. access for children to justice;
10. protection of the child as a victim and potential witness;
11. and training for Government and other agencies dealing with child victims.

Point 2 of UNICEF's Guidelines calls for a guardian to be appointed for every child who is suspected of being trafficked, so this adult can "accompany the child throughout the entire process until a durable solution in the best interests of the child has been identified and implemented". The Convention contains a slightly more general provision on this point. Article 10.4.a requires States Parties, as soon as an unaccompanied child is identified as a possible trafficked child, to "provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child".

The key objective here is to ensure that a specific individual is responsible for upholding the best interests of the child and for ensuring that in any decisions affecting the child that are taken by others (such as First Responders and whichever agency acts as Competent Authority in the UK), the child's best interests are a "primary consideration", as required by the UN *Convention on the Rights of the Child*. There should be continuity in who plays this role so that, while the officials whom a child encounters may keep on changing, the child knows that her or his legal guardian will remain consistent.

Risk assessments are essential to ensure that no decision is taken which places a child in a situation of foreseeable risk. They are also essential when considering what should happen to children who have been trafficked internally, for example, whether family reunification is an appropriate durable solution. One of the risks concerns possible threats from traffickers or others to the security of a child or the child's relatives. Part of a risk assessment about possible family reunification involves a social inquiry, to assess whether an appropriate adult is available to care for a child.

The UK authorities have not made provision for the appointment of legal guardians, either for separated children in the asylum process in general or specifically for children suspected of being trafficked.

Children referred to the NRM in 2009

As mentioned above, out of 527 people referred to the NRM in 2009, either 141 or 143 were recorded as under 18 at the time they were referred (26.7 per cent of the total number of people referred). In statistics concerning 143 referred children, 85 were reported to be girls and 58 were boys; approximately half (69) were below the age of 16 and half (72) were aged 16 or 17.

The statistics disaggregated according to the forms of exploitation for which children were reported to have been trafficked indicated that:

- 45 girls and two boys were trafficked for sexual exploitation;
- 12 girls and seven boys were trafficked for domestic servitude;
- 34 boys and 13 girls were trafficked for forced labour;
- In 30 cases (half boys and half girls) the form of exploitation was not known.⁷⁹

In response to a Parliamentary Question in January 2010, the Minister of State for Borders and Immigration reported that 57 of the 143 children referred to the NRM had been referred by local authorities: six in Scotland, four in Wales and 47 in England. He reported that no children had been referred from Northern Ireland.⁸⁰

⁷⁹ *National Referral Mechanism. Statistical Data, April to December 2009*, accessed on 12 March 2010 at www.ukhctc.org/about-ukhctc#Quarterly

⁸⁰ Phil Woolas MP, Minister of State for Borders and Immigration, House of Commons debates, Hansard, 11 January 2010: Column 696W, accessed on 19 March 2010 at www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100111/text/100111w0-013.htm#10011128000441

How referrals involving children were channelled

Actual practice varies around the UK. In Glasgow, for example, social workers fill in NRM referral forms, but before being submitted to a Competent Authority, they are seen by a specialist children's services unit, familiar with the issue of child trafficking, which adds extra information if this seems necessary, before a referral is submitted. The unit concerned justified this by explaining that, for the child concerned, a great deal depends on receiving a positive decision and the unit is aware that most First Responders are still relatively unfamiliar with the procedure and may omit significant information.

There have been suggestions that there is some confusion within the UKHTC and the UKBA about whether staff in these agencies can refer the cases of children directly to colleagues (who have the status of Competent Authority in trafficking cases) without also referring a case to local authority social services for protection purposes. This is particularly relevant as far as the UKBA is concerned, where children are identified at a border point as possibly being trafficked. Evidently, in cases where children are deemed to be adults, these children might not be referred to a local authority, and an assessment of child protection needs may not be made. There is a need for the UK authorities to ensure that referral to a local authority is made in every case, even if the young person's age is in doubt.

Child protection procedures for children who may have been trafficked

As mentioned in Chapter 4, responsibility for child protection lies with local authority children's services throughout the UK. Children who may have been trafficked, as with all children in the UK, should receive the protection of the safeguarding laws and policies. When a child is under 16 years of age, the local authority children's services usually allocates a social worker to follow the case of the child deemed in need of protection. For children aged 16 and over, the local authority may assign a key worker whose contact with the child depends on the particular local service and tends to be more limited. However, the role of these workers is distinct from that of a legal guardian and does not carry with it the same responsibilities for representing the child's best interests.

The issue of age consequently plays a huge role in influencing how a child is protected. The child protection system works on the assumption that younger children (below the age of 16) need more protection than older children aged 16 and 17. Once children reach 18 and become adults, they are deemed not to require any of the special protection that children are entitled to (unless they qualify for leaving care services). The statistics quoted above about referrals to the NRM indicate that half the children who were referred in 2009 were aged 16 or 17. There is a danger for these children when they are put into accommodation which is less safe than arrangements made for children under 16 that their particular needs may not be being met. Further, young adults who have been trafficked before reaching 18 frequently need special forms of assistance and support.

The understanding that local authority social workers have of the experience of trafficked children and the risks they run remains patchy and sometimes inadequate. Further, social workers are constrained by both their standard procedures and the norms of the organisations they work for. Social workers are not experts in immigration policy and they are often over-worked, it is often not possible for them to advocate on the child's behalf for all their educational, health, legal and welfare needs. With respect to children who are categorised as 'Unaccompanied Asylum Seeking Children', the norm is to place those aged 15 or younger in either foster care or in residential accommodation, whereas local authorities do not always accept the same level of responsibility for arranging accommodation for older children, aged 16 and 17, who consequently end up living in a variety of less protected forms of accommodation.⁸¹

One study in 2006 and 2007 of 54 young people who arrived in the UK before reaching 18 and who were interviewed by researchers investigating their emotional well-being and mental health concluded that, "Uncertainty concerning their immigration status causes extreme anxiety and distress for young people, particularly those who are in their late teens and nearing the end of their discretionary leave to remain in

⁸¹ Section 20 of the Children Act 1989 requires a local authority to "provide accommodation for any child in need within their area who appears to them to require accommodation" if no-one has parental responsibility for the child. However, the yardstick for assessing whether a young person of 16 or 17 must be provided with accommodation is different. In this case the local authority is only required to provide accommodation for young people "whose welfare the authority consider is likely to be seriously prejudiced if they do not provide him with accommodation".

the UK”.⁸² The study also noted that younger children who were placed in foster care benefited from the emotional relationships established, while older children who were living on their own were often lonely and without any social networks to support them.

The issue of legal guardians

The Convention requires States Parties to ensure that “a legal guardian, organisation or authority” is appointed as soon as a trafficked child is identified (Article 10.4 a). The authorities in the UK have so far not taken action to appoint legal guardians for trafficked children, and have not followed the recommendations of the Committee on the Rights of the Child on this point. They have ignored calls from ECPAT UK, ILPA and others to appoint legal guardians for children who are suspected of being trafficked.

The Committee on the Rights of the Child has reviewed the situation in the UK, including the way that decisions are taken about unaccompanied and separated children. On the last occasion, in 2008, it noted:

“The Committee regrets that the principle of the best interests of the child is still not reflected as a primary consideration in all legislative and policy matters affecting children, especially in the area of juvenile justice, immigration and freedom of movement and peaceful assembly...[and] **recommends that the State party take all appropriate measures to ensure that the principle...is adequately integrated in all legislation and policies which have an impact on children, including in the area of criminal justice and immigration**” (emphasis in the original).⁸³

The result of the UK authorities’ not appointing a guardian for every child suspected of being trafficked is that no individual is necessarily responsible for accompanying such a child through all the legal and other procedures faced by the child in the UK. None of those whom a trafficked child encounters while being questioned or their claim to have been trafficked considered (such as local authority social workers, police or immigration authorities) has responsibility solely for upholding the child’s best interests or ensuring that decisions affecting the child make the child’s best interests a primary consideration. While it is appropriate that the child’s views should be taken into consideration in accordance with the age and maturity of the child, it is also vital that one person gives absolute priority to the child’s best interests.

A guardian should be appointed at the very earliest stage and accompany a presumed trafficked child during forensic interviews with the police. The guardian should consider with the child whether it is in the best interests of the child to give testimony for use in criminal or civil judicial proceedings.⁸⁴ He or she should also think ahead and, for example, take timely action to seek compensation for a child who has been exploited.

In the absence of a legal guardian, local authority social services may appoint a social worker to accompany a child who is suspected of being trafficked to interviews. A consultation with practitioners (social workers) in 2009 recommended this course of action in the absence of guardians.⁸⁵ The same consultation concluded that, in the experience of practitioners, trafficked children were more inclined to disclose their experiences (while being trafficked) to a key worker than to anyone else.

Other issues

The same consultation with practitioners in 2009 concluded that, in addition to the appointment of key workers, there were two other specialist services required to meet the needs of trafficked children. The first concerned the need for trained and specialist interpreters for children trafficked from abroad. The other concerned the need for safe and supported accommodation with trained and supported foster carers.⁸⁶

⁸² Elaine Chase, Abigail Knight and June Statham, *Promoting the emotional wellbeing and mental health of unaccompanied young people seeking asylum in the UK. Research summary*, Thomas Coram Research Unit, Institute of Education, University of London, July 2008, pages 1 & 5. Accessed on 10 March 2010 at eprints.ioe.ac.uk/62/1/Asylum_research_summary.pdf

⁸³ Paragraphs 26 and 27, Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, UN document CRC/C/GBR/CO/4, 20 October 2008.

⁸⁴ ‘Check list for guardians: roles and responsibilities’, in UNICEF, *Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe*, Geneva, 2006

⁸⁵ Pearce, J. J., Hynes, P., and Bovarnick, S., *Breaking the wall of silence. Practitioners’ responses to trafficked children and young people*, NSPCC and University of Bedfordshire, 2009, page 13.

⁸⁶ *Ibid.*

Accommodation

The consultation also noted that the focus of local authorities' children's services was on "the welfare of younger children and that the 16 to 18 group could slip through the net and out of view",⁸⁷ confirming that care arrangements for this age group of older children, who are in their last two years of childhood are not appropriate. ECPAT UK similarly recommends that all child victims of trafficking are placed with foster carers and that foster carers receive training in understanding the needs and safeguarding concerns of children who have been trafficked and how best to care for them. Foster care provides the best protection for trafficked children and reduces the risk of them going missing and being exposed to further harm.

Legal representation

Children normally have access to legal representation. NGOs providing support to children who have been trafficked told the Monitoring Group that, since 1 April 2009, they have sought advice from solicitors in order to determine on a case by case basis if it is in the best interests of the child to refer her or him to the NRM. This can be quite challenging as there are few solicitors specialising on the issue of human trafficking, especially outside London, and ultimately a referral is the decision of children's services. Some children may have a welfare solicitor dealing with a dispute about their age, an immigration solicitor dealing with their asylum claim and a criminal solicitor dealing with the criminal charges against them. But not all the solicitors involved understand what trafficking is and the complexities involved.

Interpreters

The access to quality interpreters can be equally inconsistent. There have been reported cases of local authorities organising interpreters for children who speak English and have specified they want to have appointments and interviews in English who are then put under pressure to speak through an interpreter, even when the child feels his or her words are being mistranslated.⁸⁸ There have also been instances where interpreters from the local community are called upon without their background and their relationship with the children being checked.⁸⁹ On other occasions, interpreters are reported to have been employed who had no knowledge about human trafficking and who were unable to translate what the child was saying. Some interpreters are also reported to have been dismissive because they were embarrassed about their co-nationals' experiences and others are reported to have violated confidentiality agreements.⁹⁰

Coordination

Coordination between agencies and professionals in the UK has proved elusive in cases involving children who required protection in general. The failure of professionals in different agencies to pool information and develop a common protection strategy in individual cases has been the subject of criticism by official inquiries. One result has been the development of a technique known as 'Team Around Children' (TAC), which could be a model for providing adequate levels of protection and assistance for those who have been trafficked, adults and children alike. The TAC process starts when an assessment of an individual case, carried out by using a Common Assessment Framework,⁹¹ concludes that a multi-agency response is required. The team involved adopts an Action Plan for the individual involved and, for accountability and effectiveness, has a clear team leader.⁹²

The challenge of preventing children being re-trafficked after going missing from care

Many separated children who are placed in local authority accommodation in the UK subsequently walk out and go missing. There is evidence that some respond to pre-arranged orders to rejoin their traffickers (or others) who subsequently exploit them. The same patterns are repeated in numerous other European countries.

No complete statistics are available to indicate how many unaccompanied children go missing each year. Among the 153 children whose cases were specifically referred to the NRM (between 1 April 2009 and 13

⁸⁷ *Ibid.*, page 12.

⁸⁸ Interview 17 on 12 October 2009 with NGO – service provider.

⁸⁹ Interview 70 on 30 November 2009 with NGO – service provider.

⁹⁰ Interview 35 on 3 November 2009 with NGO – service provider.

⁹¹ The Common Assessment Framework is a standardised approach to conducting assessments of children's additional needs and deciding how these should be met. It is used by practitioners across children's services in England. See 'Common Assessment Framework (CAF)' accessed on 27 April 2010 at www.dcsf.gov.uk/everychildmatters/strategy/deliveringservices1/caf/cafframe-work

⁹² For an example of the steps involved in the TAC process in one place, see 'Summary of the TAC Process', Children and Young People Partnerships, Swansea, accessed on 26 February 2010 at www.cypswansea.co.uk/index.cfm?articleid=24938

January 2010), 19 were reported by the UKHTC to have gone missing.⁹³ In February 2010 a BBC radio programme reported that 330 children aged between nine and 17 had gone missing from local authority care between April 2008 and August 2009.⁹⁴ It was not clear how many had been located subsequently. The programme reported that, in some cases, some local authorities had not recorded any information about such children (in the form of photographs or other identifying details), so once they went missing it was unnecessarily difficult to look for them.

Three years earlier, in 2007, an ECPAT UK report found that almost 60 per cent of children known or suspected to be trafficked had gone missing from care.⁹⁵ Of the 56 missing children, none had been traced. Children from China, Nigeria and Vietnam figured most prominently.

This ongoing pattern of children going missing raises major questions about whether local authorities responsible for protecting children and those directly responsible for accommodating unaccompanied children are doing enough to protect children from traffickers.

Techniques to prevent any child from going missing

Numerous precautions can be taken to stop children from leaving relatively safe accommodation and returning to the direct control of traffickers. As it is unclear what proportion of children who go missing are returning to the control of traffickers, it would almost certainly be disproportionate to opt for extreme measures in all cases, such as placing all or many such children in secure accommodation – in effect, detaining them.

Policy in the UK for responding to cases of child “runaways”, as they are termed, was not designed specifically with the cases of unaccompanied foreign children in mind, but rather the estimated 100,000 children and young people who ‘run away’ from home each year.⁹⁶

Nevertheless, good practice (or ‘promising practice’) is being developed, both to prevent children who may be under the influence of traffickers from going missing and to respond when they do go missing.

Following reports that unaccompanied Chinese children were going missing,⁹⁷ Hillingdon Borough Council improved its multi-agency working practice to address this. This local authority provides 24-hour support at Heathrow airport and has developed a system of personal advisers for children. A qualified social worker is allocated to each unaccompanied or separated child when there are specific concerns about the child’s welfare. When the child is 16 or 17 years old, the personal adviser need not be a qualified social worker, but somebody with a background in youth work.⁹⁸ Children are interviewed before they formally enter the UK (i.e. airside) and are warned about the risk that they might be in the process of being trafficked. Their mobile phones are confiscated and they are not permitted to contact any adults unless it is through a member of staff.⁹⁹ Although this system has not yet been evaluated, anecdotal evidence suggests it has proved effective and reduced the proportion of children going missing.

Social workers with experience of protecting children who remain under the influence of traffickers suggest measures such as:

- Restricting children’s right to use a telephone (which may be used to call their trafficker or an associate), either by supervising calls (and ensuring they are able to understand the telephone conversation) or not allowing children to make any calls initially;

⁹³ *Freedom of Information* request 20100022 by UNICEF, inquiring about the number of children who had gone missing after being referred through the NRM, answered 21 January 2010.

⁹⁴ ‘Asylum-seeking children are going missing from care’, 21 January 2010, accessed on 11 March 2010 at news.bbc.co.uk/1/hi/uk/8470620.stm

⁹⁵ ECPAT UK, *Missing Out: A Study of Child Trafficking in the North-West, North-East and West Midlands*, London, 2007.

⁹⁶ See ‘Young runaways’, accessed on 27 April 2010 at www.dcsf.gov.uk/everychildmatters/safeguardingandsocialcare/safeguardingchildren/youngrunaways/youngrunaways

⁹⁷ ‘Revealed: 77 trafficked Chinese children lost by home’, 5 May 2009, accessed on 9 April 2010 at www.guardian.co.uk/world/-/2009/may/05/trafficked-chinese-children-crime

⁹⁸ House of Commons Home Affairs Committee, Hearing on Missing Unaccompanied Asylum-Seeking Children, 7 July 2009, uncorrected transcript of oral evidence to be published as HC 729-I, accessed on 8 April 2010 at www.publications.parliament.uk/pa/cm200809/cmselect/cmhaff/uc729-i/uc72902.htm

⁹⁹ *Ibid.*, question 42.

- Giving the children a note of the address where they are staying and a telephone number to call if they do walk out and run into difficulties: i.e. giving the child the message that, “if you have to go and you find yourself somewhere where you really don't want to be, you can always phone this number and we will help you”;
- Taking a photograph of the child's face before or immediately after they move into safe accommodation;¹⁰⁰
- Accompanying children at risk on every outing for at least one month. Once they are allowed out unaccompanied, for example if they start attending school or college, someone should keep a detailed track of the children's movements. This is evidently resource-intensive: when the child leaves a particular place, and also when he or she reaches a destination, someone must phone into a central point, usually someone in the child's accommodation and someone else must log the details;
- Ensuring that foster parents and supervisors of accommodation where children considered to be at any risk of going missing are housed are informed of possible danger signs, such as visitors or people hanging around in the vicinity of the accommodation, the child asking to use the telephone or suggesting that he or she would like to visit a particular place in another part of the UK;

In the case of children who have already been exploited in a particular place, consideration should be given to placing them in accommodation with a different local authority, to minimise the likelihood that they will encounter any individuals who have abused them. This is evidently difficult (bureaucratically) to arrange, as responsibility for providing accommodation lies with the local authority where a child has been identified as being at risk.

Conclusion

This chapter examined the impact of the implementation of the Convention on child victims of trafficking. The research of the Monitoring Group revealed that the way in which the UK Government has implemented the Convention has overlooked existing child protection and safeguarding frameworks, with the unintended effect of undermining them. Further, the introduction of the NRM has failed to augment the rights and safeguards for child trafficked victims in the UK. One of the great concerns is the fact that the UK Government has not recognised the need to appoint a legal guardian at an early stage as required by the Convention and before an NRM referral takes place in order to guarantee the best interests of the child. Appendix 4 expands on the issues addressed here and chapter 6 presents further evidence which demonstrates that the UK Government has failed to address the entirety of its obligations towards victims of trafficking under the Convention.

¹⁰⁰ Some children are reported to have been finger-printed, apparently for identification purposes, but this evidently makes a negative impression, due to the assumption in many countries that only suspected criminals are finger-printed.

Chapter 6: The impact of the NRM's procedures on presumed trafficked persons

The way the NRM has operated has had notable negative impacts on the very people it was supposed to benefit: those who have been trafficked.

The experience of 'reflection periods' for trafficked persons

A key aspect of the experience of reflection periods in the UK during 2009 (and one that appears at odds with Article 13 of the Convention) is that those who benefited were, in many cases, not given an opportunity to recover during the 45-day reflection period, because inquiries by the authorities concerning the individual's immigration status or other matters were not put on hold. During reflection periods, interviews with the police, screening and asylum interviews and even criminal court proceedings against victims reportedly did not stop.

One legal representative reported having to provide evidence from a psychiatric assessment to convince the relevant staff member of the UKBA that a substantive interview about immigration questions would be detrimental to a particular presumed trafficked person. Even so, the substantive asylum interview went ahead.¹⁰¹

Many of those providing support to trafficked persons consider that, during a reflection period, individuals should not be questioned about their immigration status – as this is likely to worry them and disrupt the process of recovery.

Many people who received negative decisions from a Competent Authority reacted badly, feeling that they had been betrayed by the UK's 'system' and that they were being accused of lying.¹⁰² The impact of such decisions is far reaching in terms of both social and psychological consequences. Lack of protection by "trusted" authorities is a key feature in many people's experiences of trafficking. To be met with disbelief and a rejection of application for protection can have very serious repercussions in terms of long term psychological prognosis. In one specific case the child had not had his evening meal and was quite upset upon reading the letter received by the Competent Authority.¹⁰³ The excerpt below is an example of the language used in decision letters:

"It is also noted that the Officer in Charge of your case has stated that he does not believe you have given a credible account of being trafficked, but is actually of the belief that you were working as a willing participant in a brothel. Consideration has been given to all of these factors. On the balance of probabilities, there is insufficient evidence to conclude that you have been exploited in the UK".¹⁰⁴

Negative decisions

The way the NRM has worked has been criticised by some of the individuals who have been the subject of decisions by the UKHTC or UKBA.

"I got the 45 day letter [a positive 'reasonable grounds' decision] and I didn't understand what it meant. I thought it meant I had to leave the country in 45 days. [...] The second letter [a conclusive decision] was a refusal. I would have fainted if I had got the letter myself, but it was my solicitor who got it and I had her and [someone from the First Responder] with me, explaining to me what it was and what they were going to do about it. I don't think I could have handled it if I had been alone".¹⁰⁵

Legal representatives also commented that receiving a negative decision could have an impact on immigration proceedings concerning a client. Consequently, the potential consequences of being referred in to the NRM need careful explanation in the first place to anyone presumed to be a trafficked person.

¹⁰¹ Interview 18 on 13 October 2009 with a legal representative.

¹⁰² Cases 144 and 155 submitted to the Monitoring Group between September 2009 – January 2010.

¹⁰³ Case 144 submitted to the Monitoring Group between September 2009 – January 2010.

¹⁰⁴ Competent Authority letter number 10 submitted to the Monitoring Group in September 2009 and issued between April 2009 – August 2009.

¹⁰⁵ Case 155 submitted to the Monitoring Group between September 2009 – January 2010.

Presumed trafficked persons kept in detention

In response to a *Freedom of Information* request¹⁰⁶ in January 2010, the UKHTC reported that, at the time of referral, out of a total of 549 people whose cases were referred to the NRM, 34 were held in immigration detention centres and a further 22 in either prison or a Young Offenders Institute (a total of 56, accounting for slightly more than 10 per cent of the adults and children whose cases were referred to the NRM).

In principle, whenever a 'reasonable grounds' decision is made that a detainee is a presumed trafficked person, policy in the UK is that he or she should normally be released from detention.¹⁰⁷ In practice, however, in 39 such cases the individuals concerned remained incarcerated, 24 in immigration detention centres and 15 in prison or a Young Offenders Institute.¹⁰⁸ No case-specific information was available to explain why these 39 presumed trafficked persons were kept in detention (nor how many were the subject of age disputes and were subsequently shown to be children). Although the periods for which statistics were available are not exactly the same, once again it seemed that the 39 accounted for just over 10 per cent of the total number who were granted 'reasonable grounds' decisions. In addition to these detainees, other people were kept in detention who may have been trafficked (such as children brought from Vietnam to work in cannabis farms in the UK) but whose cases were not referred to the NRM.

Additional challenges faced by presumed trafficked persons who are EEA nationals

Support organisations and others face dilemmas in deciding whether it is actually in a trafficked person's interests to be referred to the NRM. By referring someone who is a European Economic Area national to a Competent Authority, a support organisation or advice centre would be alerting the authorities to the fact that this individual is in the UK but is not currently economically active or self-sufficient. One advice centre told the Monitoring Group that it feared such individuals might be detained and removed and had concluded that it would not be in the interests of an EEA national who has been trafficked to be referred to the NRM. Similar arguments arise in certain other cases.

The impact of the National Referral Mechanism's procedures on organisations which provide advice and support to presumed trafficked persons

The NRM enables a number of organisations to make referrals of cases of presumed trafficked persons, but the NRM itself is not a multi-agency procedure. Rather, decision-making remains relatively centralised, in the hands of two agencies. First Responders and legal representatives have to provide evidence, while the Competent Authority scrutinises the evidence and rejects that which does not meet its standards. This might generally be regarded as a reasonable procedure. Unfortunately this research strongly suggests that the Competent Authorities in critical instances fail to properly understand the nature of trafficking or the obligations entailed in the provisions of the Convention.

The particular way in which the NRM has functioned has also had significant implications for the staff of organisations which support trafficked persons:

- More time has had to be spent explaining the NRM and its procedures to people requiring support. This has meant a choice between making less time available to support victims or increasing the workload of staff;
- The NRM has to be explained to victims via interpreters, who in many cases are volunteers. No information on the NRM has been issued in other languages;
- More time has been spent (than before April 2009) in liaising with officials responsible for vetting cases and legal representatives, chasing up decisions and challenging negative decisions;
- Staff have had to pick up the pieces when someone who they believe to have been abused (and probably trafficked) receives a negative decision from a Competent Authority.

Impact of the NRM on First Responders

Criticism of the short time in which First Responders are supposed to prepare referrals

The staff of First Responders and other support organisations criticised the short time available for the

¹⁰⁶ *Freedom of Information* request 20100021 by ILPA, inquiring about the number of adults who were in detention and/or prison at the time of referral continued to be during the 45 day reflection period, answered 21 January 2010.

¹⁰⁷ "If the PVoT [potential victim of trafficking] is in detention they will normally need to be released on temporary admission/temporary release (TA/TR), unless due to the particular circumstances of their claim, their detention can be justified under the overall detention policy". UKBA, *Victims of Trafficking*, 2009, page 25, 'RG Outcome – person accepted as a potential victim'.

¹⁰⁸ *Freedom of Information* request 20100021 by ILPA, inquiring about the number of adults who were in detention and/or prison at the time of referral continued to be during the 45 day reflection period, answered 21 January 2010.

preparation of referrals. They commented that the requirement that presumed trafficked persons should be the subject of a referral within a few days meant there was a rush to collect evidence to support a referral. This allows inadequate time to build trust: far too little to enable many people who have been trafficked to disclose what happened to them. The requirement of the NRM is for a consistent, coherent story to be produced as quickly as possible. It needs to be consistent and coherent at an early stage to avoid prejudicing any application for longer-term leave to remain in the UK.

One First Responder observed that, instead of creating a reflection period, the new procedure had the effect of removing any reflection period, as the First Responder was obliged to urge on a presumed trafficked person to divulge information within a matter of days of encountering them for the first time.¹⁰⁹

Coordination and relations between agencies in the referral system

Some positive remarks were made to Monitoring Group staff about the NRM, notably that, in some areas, it had brought together various agencies and given them a common protocol to work with.¹¹⁰ This was considered to be better than the ad hoc arrangements that preceded it. In some parts of the UK, such as Northern Ireland, the new mechanism was perceived by some participants to have improved the cooperation between a range of agencies.

Nevertheless, the NRM does not function as a multi-agency system or a multi-disciplinary referral network, as the OSCE handbook suggests it should. This is mainly because two agencies have been given the power to vet (and veto) all referrals. Further, First Responders who made an effort to follow NRM procedures, by obtaining information about a presumed trafficked person more rapidly than in the past and submitting it to a Competent Authority within a few days, have felt betrayed or misled when 'reasonable grounds' decisions have taken weeks to be made (instead of the expected five days) and negative decisions have been based on a relatively substantial analysis of the facts of a case, rather than a swift assessment of the indicators identified in a referral form that suggested to a First Responder that an individual has been trafficked.

In one case, the behaviour of a Competent Authority staff member when interviewing a presumed trafficked person who was accompanied by a staff member from a First Responder caused offence, both because of the inquisitorial style and criticisms that the Competent Authority staff member levelled at the support organisation staff member during the course of the interview.¹¹¹ It was not possible for the Monitoring Group to assess whether this was typical. However, it was apparent that relations between First Responders (both NGOs and other law enforcement agencies) and Competent Authorities suffered as a result of the vetting procedures introduced by the NRM. There was an obvious need for some mechanism for First Responders to express their discontent, not specifically about the decisions made by Competent Authorities, but about the manner in which they were made.

Granting trafficked persons a longer-term right to reside in the UK

Standards set by the Convention

The Convention (Article 14.1) requires victims to be issued with renewable residence permits in two situations:

- a. "the competent authority considers that their stay is necessary owing to their personal situation;
- b. "the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings".

The same article (14.5) also points out that granting a residence permit "shall be without prejudice to the right to seek and enjoy asylum".

Policy and practice in the UK on granting residence permits to trafficked persons after a reflection period

The UKBA is responsible for issuing residence permits to trafficked persons who are nationals of countries which are not in the EU or European Economic Area. Its procedures envisage both options set out in the Convention. A trafficked person may already have leave to be in the UK, or may have an outstanding

¹⁰⁹ Interview 58 on 18 November 2009 with a service provider.

¹¹⁰ Interview 45 on 11 November 2009 with law enforcement.

¹¹¹ Interview 58 on 18 November 2009 with a service provider.

application for leave, for example an application for recognition as a refugee or humanitarian protection, or an application under the immigration rules. In some cases a trafficked person may be seeking leave on a discretionary basis that is longer than the one year (renewable) that would be given where a residence permit is granted. If a trafficked person does not wish to give evidence for a criminal prosecution or the police are not seeking the person's cooperation, and application for leave on another basis is not being dealt with, the UKBA guidance states that the Agency has three options, which it lists in the order that follows:¹¹²

1. To support the trafficked person in voluntary return to their own country;
2. To instruct a trafficked person who is not entitled to remain in the UK to leave; or
3. To consider their personal circumstances and grant them leave to remain in the UK (either discretionary leave or another category of leave).

If a trafficked person is willing to help in criminal proceedings and their statement is considered to be pertinent, then where the person has no other leave to remain in the UK and no other pending application for leave, the norm is to grant a one-year residence permit. The UKBA guidance states that "the Police need to apply for the person to be granted leave to remain on this basis" (to assist with Police inquiries).¹¹³

However, in practice police investigations may not have advanced far enough, by the time a 45-day reflection period expires, for the police to feel that they can justify asking for a residence permit to be issued to a trafficked person who may be asked to give evidence, when this is not yet certain. A law enforcement official shared his worries with the Monitoring Group about this:

"[T]he problem we are going to have is that if we have a cooperative witness who is in a reflection period who has finished the 45 days, but we can't identify the traffickers or we can't arrest the traffickers and we can't progress to court proceedings, would the UKBA issue the 12-month residency permit and I have to say, no it won't...[After 45 days] we make recommendations but we can't apply for residence permits, we can't apply for anything. So, yes the procedure is very good until the completion of the 45-day reflection period...But at the termination of that, we are left wondering a bit where we are going to go now with this victim? They want to help us, we think it's best they stay in the country to help us but there's really nothing in place to enable that. Unless...prosecution proceedings [are] ongoing".¹¹⁴

In response to a Parliamentary Question in January 2010, the Minister of State for Borders and Immigration reported that, out of the total 527 referrals through the NRM from 1 April 2009 to 31 December 2009:

- 85 received a positive "conclusive grounds decision";
- of these only 30 were granted a residence permit or other form of leave to remain;
- a further 40 did not get the residence permit because they were EU or British nationals whose stay in the UK was not subject to immigration control.¹¹⁵

These figures are worrying, because, as NGOs and legal representatives supporting trafficked EU nationals indicated, a residence permit is beneficial for those who may not otherwise have recourse to certain services in the UK. In conversations with the Monitoring Group, organisations providing support to trafficked persons expressed their concerns about the lack of clarity on the criteria used to grant residence permits.¹¹⁶ The Monitoring Group was unable to establish what the impact of this lack of clarity (and

¹¹² UKBA, *Victims of Trafficking*, 2009, page 60, accessed on 26 March 2010 at www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/victimsoftrafficking.pdf?view=Binary

¹¹³ UKBA, *Victims of Trafficking* (section on 'Conclusive Outcome - Trafficked: assisting with Police enquiries from UK'), accessed on 26 March 2010 at www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/victimsoftrafficking.pdf?view=Binary

¹¹⁴ Interview 45 on 11 November 2009 with law enforcement agency.

¹¹⁵ Phil Woolas MP, Minister of State for Borders and Immigration, House of Commons debates, Hansard, 12 January 2010: Column 853W, accessed on 19 March 2010 at www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100112/text/100112w-0009.htm#10011271001149

¹¹⁶ There is a particular difficulty in cases where an application for asylum has been made and rejected, but a residence permit granted, in that, because a residence permit is granted only for one year, it is not possible, at the moment a residence permit is granted, to challenge the decision to refuse asylum, i.e. to apply for the leave given to be 'upgraded' to refugee status. Instead, an application for such an 'upgrade' can only be made when leave has been granted for more than a year. The trafficked person could also claim asylum if faced with being removed from the UK when their residence permit expires. In such cases, being granted a residence permit may actually reduce the chances for trafficked persons of challenging the decision not to grant them leave to remain in the UK for a longer time.

uncertainty for the trafficked person involved) has been, but was concerned that the very uncertainty for those who are granted a residence permit about what will happen once court proceedings are completed may reduce their inclination to cooperate with the police and to provide evidence for the prosecution of suspected traffickers.

Limitations on the ability of citizens of other EU countries to remain in the UK, even when identified as a victim

Trafficked persons who have received a positive conclusive decision and been formally identified as 'trafficked' by a Competent Authority cannot necessarily get access to financial support to remain in the UK. A trafficked person who is a national from one of the A8 countries was told by the Competent Authority that he did not need permission to remain in the UK. He was also told that, as he was not working, he had no right to access housing support: once his reflection period ended, so too would funding for his accommodation. Without being expelled, he was put in a position where he was going to find it very difficult to remain in the UK.¹¹⁷ At the time of writing, EU citizens also have no access to the return programme funded by the Home Office and if they wish to return, whoever is dealing with their case has to find ways to finance the return. It is questionable whether the authorities adhered in this case to their obligation under Article 12 (assistance to victims).

An alternative framework to seek permission to remain in the UK: the asylum system

For those who apply for asylum, this may well be a more satisfactory option, as it would give them the possibility of securing leave to remain in the UK for a longer period than the 12 months offered through the residence permit. If granted asylum, they would normally be given five years leave to remain in the first instance, with the possibility of settlement thereafter, and a panoply of rights and entitlements as refugees. A refusal to recognise a person as a refugee accompanied by a residence permit means the decision on the application for asylum cannot be challenged.

There are also concerns that the NRM may be reducing the chances of success for presumed trafficked persons who apply for asylum. The Monitoring Group had access to asylum and NRM decisions issued simultaneously concerning the same individual. As one NGO explained, "When a woman applied for asylum, she had at the same time a substantial interview for the NRM and an asylum interview. She then got a conclusive grounds decision and the asylum decision at the same time. Both documents seemed to have been copied and pasted from one another."¹¹⁸ While consistency in decision-making is positive, the fact that two separate processes for reaching decisions, each with their own criteria and standards of proof, have been conflated has created unease, especially among those designated NGOs who can act as First Responders. They are worried they may be colluding in a process that has the potential to make things worse for the presumed trafficked persons, to whom they have a duty to protect and support.¹¹⁹

Conclusion

This chapter expanded the evidence presented in chapters 4 and 5, demonstrating how the UK Government's shortsightedness in implementing the Convention adversely impacted on trafficked persons and on those organisations which work to support them. The evidence presented in this chapter is further complemented in appendix 5, and appendix 6 concentrates on the specific issues relating to Northern Ireland, Scotland and Wales.

¹¹⁷ Case 136 submitted to the Monitoring Group in the period between April 2009 -September 2009.

¹¹⁸ Interview 15 on 7 October 2009 with NGO – service provider.

¹¹⁹ Interview 58 on 18 November 2009 with NGO – service provider.

Chapter 7: Issues relating to investigation and prosecution

Laws have been adopted in the UK over the past decade relating to human trafficking, forced labour, slavery and servitude. The laws cover the definition of trafficking in human beings in the Convention. However, there appear to be specific impediments to implementing laws on preventing and prosecuting exploitation for purposes other than sexual exploitation. Specifically, there is not sufficient understanding among key First Responders of the forms of coercion associated with trafficking, notably debt bondage and the various ways in which those in debt bondage are controlled by exploiters.

Debt bondage occurs when someone who has borrowed money is required to work in order to repay a debt in circumstances where the value of the work vastly exceeds the loan. One form of debt bondage consists of telling migrants (whether they have crossed an international border or not) after their arrival at destination that they are under an obligation to pay back transport or other costs and that they must work to do so.

Since the 1950s the UK has been bound by a convention banning the use of debt bondage.¹²⁰ Debt bondage is also interpreted by the International Labour Organization to be a form of forced labour.¹²¹ Although the UK ratified the UN *Supplementary Convention* in 1957, the principal reference point for defining servitude and forced labour in the UK remains Article 4 of the Council of Europe's *Convention for the Protection of Human Rights and Fundamental Freedoms* (1950).¹²² It was only in 2009 that the *Coroners and Justice Act 2009* made it a specific criminal offence in England, Wales and Northern Ireland to hold a person in slavery or servitude or to require a person to perform forced or compulsory labour.

Nevertheless, numerous migrants arriving in the UK are reported to owe exorbitant debts (or are told by those who arranged their journeys that they do so) and are instructed by traffickers or others that they must engage in particular income-generating activities to repay their debt. Some consider that they are not in debt bondage even though they feel they have no choice but to agree to pay those who arrange their journeys to the UK many more times than the apparent costs, as they cannot obtain finance for their trip from other sources.

The debts that migrants are required to repay have been mentioned at the trials of individuals accused of growing cannabis illegally in the UK (see Appendix 5, section c below). However, the possibility that defendants were subjected to debt bondage and the implications of this (in particular in terms of threats to themselves or their families) does not appear to have been taken into account during trials.

This is not only relevant in considering whether defendants were committing offences under duress, but also in determining the extent to which the UK has a responsibility to protect them in the longer term, and to avoid returning them to their own countries and into the hands of criminals who will maintain them in this form of forced labour. In particular, it raises questions whether the UK is upholding its obligations to prevent trafficking as required by the Convention.

Understanding is similarly limited with specific respect to domestic workers who are trafficked into servitude or forced labour, or otherwise subjected to forced labour. Law enforcement officials are reported in some cases to remain unclear about what aspects of abuse should be referred to the criminal justice system, i.e. what the boundaries of employment law are and where a criminal law response is needed because forced labour, servitude or other criminal offences are occurring.¹²³

¹²⁰ Debt bondage is one of four types of "servile status" prohibited by the UN *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery*, 1956. The definition of debt bondage in the Supplementary Convention can be found in the Glossary.

¹²¹ "Debt bondage or 'debt slavery' is a particularly prominent feature of contemporary forced labour situations", according to the ILO (International Labour Organization, *A global alliance against forced labour*, ILO, Geneva, 2005, page 8).

¹²² Article 4 of the Council of Europe *Convention on the Protection of Human Rights and Fundamental Freedoms* guarantees that "No one shall be held in slavery or servitude" (4.1) and that "No one shall be required to perform forced or compulsory labour" (4.2). The text of the Convention was accessed at conventions.coe.int/treaty/en/treaties/html/005.htm See comments on 'servitude' in the Glossary.

¹²³ Interview 22 on 20 October 2010 with law enforcement agency.

In the course of this research, Monitoring Group staff were told by police officers that police generally give priority to addressing trafficking cases that involve sexual exploitation or the risk of it, as they are considered to experience more harm (potentially involving rape and sexual assault) than individuals subjected to forced labour. However, it is evident that cases of sexual exploitation are ones which, in some parts of the UK at least, the police have given attention to for many years, whereas they are significantly less familiar with cases involving forced labour and less confident that they can differentiate between situations of forced labour and others involving other forms of labour abuse.¹²⁴

Monitoring Group staff also learnt from other professionals that women who had been trafficked for the purpose of sexual exploitation were being identified more frequently and more easily than people trafficked for other purposes. This appears unsurprising, given that it is not the specific responsibility of a particular agency to detect such cases. In response to gross abuses experienced by some migrant workers in the UK, the authorities have created a new agency to regulate the activities of recruiters and employers, the Gangmasters Licensing Authority (see appendix 3, sections b and c below), but this agency has no criminal justice mandate to investigate cases of forced labour or human trafficking, although they are empowered to act as a First Responder and refer cases to a Competent Authority.

Prosecutions rely on evidence collected by the police or immigration service, but neither of these has a mandate to conduct pro-active investigations into labour abuses. Given these factors, the UK Government's policy response with respect to the large sectors of the economy in which migrants are subjected to forced labour and other abuse seems to have been to introduce partial regulation, rather than to engage in rigorous monitoring or policing.

Assessing when children are forced to work

The implication of the Convention's definition of trafficking in human beings is that any act that amounts to recruiting or moving a child for the purpose of any of the forms of exploitation mentioned in the Convention constitutes trafficking. This includes "exploitation of the prostitution of others", "sexual exploitation" and "forced labour".

Most fundamentally **children cannot consent to being exploited**: the fact that an adolescent has agreed to come to the UK to earn money for someone else in prostitution or in criminal activities (such as growing cannabis) does not signify that she (or he) was not trafficked.

A crucial issue in terms of the UK authorities viewing children as victims of trafficking concerns the way in which forced labour is understood in the UK. In clarifying what may constitute forced labour, guidance issued by the Committee on the Rights of the Child refers to "work or services performed for private parties under coercion (e.g. the deprivation of liberty, withholding of wages, confiscation of identity documents, or threat of punishment) and slavery-like practices such as debt bondage".¹²⁵

Assessing what constitutes forced labour in the case of children can be difficult, as the degrees of coercion necessary to manipulate a child into obeying orders vary according to the child's maturity and his or her access to livelihood alternatives. In the case of children who are brought to the UK, who do not speak English or are not familiar with the country's culture or legal norms, and are entirely dependent on someone who controls them and requires them to work or earn money in a particular way, it is not just the specific duress to which a child is subjected that is an indicator of forced labour or trafficking, but also the young person's degree of dependence on the person giving them orders and, most significantly, the way in which the child is exploited in the situation in which she or he is placed.

Helpfully the Crown Prosecution Service (CPS) has given guidance to prosecutors suggesting that the key issue here is to assess whether children have been subjected to duress. For example, in November 2009 prosecutors were advised what to look for:

¹²⁴ Interview 62 on 20 November 2009 with law enforcement agency.

¹²⁵ *Revised Guidelines Regarding Initial Reports to be submitted by States Parties under Article 12, Paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, adopted by the Committee on the Rights of the Child at its 43rd session, 29 September 2006, UN document CRC/C/OPSC/2, 3 November 2006.

“Recent cases have highlighted the following offences as those that are likely to be committed by child trafficked victims:

- theft (in organised ‘pick pocketing’ gangs), under section 1 Theft Act 1968;
- cultivation of cannabis plants, under section 6 Misuse of Drugs Act 1971.

Prosecutors should be alert to the possibility that in such circumstances, a young offender may actually be a victim of trafficking and have committed the offences under coercion.

Where there is clear evidence that the youth has a credible defence of duress, the case should be discontinued on evidential grounds. Where the information concerning coercion is less certain, further details should be sought from the police and youth offender teams, so that the public interest in continuing a prosecution can be considered carefully. Prosecutors should also be alert to the fact that an appropriate adult in interview could be the trafficker or a person allied to the trafficker”.¹²⁶

Example of children convicted of cultivating cannabis

Unfortunately matters do not appear to be so enlightened in practice. Children from Vietnam have been arrested and prosecuted for cultivating cannabis plants in the UK, mainly in England and Wales. Some, but not all, have been referred to the NRM, reportedly accounting for almost a quarter of the children whose cases were referred during 2009. The main offence such children are charged with is the cultivation of cannabis plants under section 6 of the *Misuse of Drugs Act 1971* (‘Restriction of cultivation of cannabis plant’). In some cases, the authorities have disputed the age of young Vietnamese, making the assumption they were adults when there was some doubt around this. When their cases are investigated, in most cases no record is found of their entry into the UK, implying that they were smuggled into the UK or entered under false documents. Some tell the police that they have an obligation to work in order to repay a debt. Even when it is clear that children have been smuggled into the UK especially to cultivate cannabis, the authorities have not routinely interpreted such cases to involve trafficking, nor considered the children to be victims of traffickers.

In a recent case, a Vietnamese boy who was described as 14 years old was initially found by the police at a cannabis farm in May 2009. He was reportedly placed in local authority care, but left and went missing. He was rearrested four months later at another cannabis farm, accompanied by three adults. The media reported on his appearance in court in March 2010, published the boy’s name and reported that the UKBA had concluded that the boy had not been trafficked to the UK.¹²⁷ The three adult Vietnamese arrested at the same time were all reported to have “paid large amounts of money” to come to the UK and were each sentenced to two years’ imprisonment. After spending more than five months in custody, awaiting trial, the 14-year-old was convicted and placed under a three-year Supervision Order.

In such cases the UK authorities have either not considered trafficking or have concluded that the adolescents in question were not trafficked, even though they have been brought from South-East Asia and introduced illicitly into the UK, and are almost entirely dependent on adults who give them orders. This interpretation of UK law and of international conventions is extremely worrying. Several publications have documented how Vietnamese children are brought to the UK and act under orders following their arrival, notably leaving local authority care to rejoin others with the same nationality. In a 2009 scoping study about children encountered in cannabis factories, the CEOP found that in the vast majority of cases in which bail was granted and the children were placed into the care of social services they were reported to go missing soon afterwards.¹²⁸ In a publication on the topic in early 2010, ECPAT UK quoted the National Policing Improvement Agency Missing Persons Bureau as reporting that 68 Vietnamese children went missing between 1 April 2008 and 31 October 2009.¹²⁹ The fact that Vietnamese children go missing from

¹²⁶ ‘Prosecution of Young Defendants charged with offences who might be Trafficked Victims’, in *Human Trafficking And Smuggling*, [Crown Prosecution Service] Guidance updated 05 November 2009, accessed on 11 March 2010 at www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/#a32

¹²⁷ ‘Fugitive, 14, ran £1m drugs farm’, *The Sentinel*, 16 March 2010, accessed on 25 March 2010 at www.thisisstaffordshire.co.uk/news/FUGITIVE-14-RAN-163-1m-DRUGS-FARM/article1915199-detail/article.html

¹²⁸ CEOP, *A scoping study into the outcomes for children and young people encountered in cannabis factories in the UK*, London, March 2009.

¹²⁹ ECPAT-UK, *Safeguarding children trafficked to the UK to undertake forced labour in cannabis factories*, Briefing No. 1, 2010, page 2.

care is not itself clear evidence that they have been trafficked or that they rejoined criminals who intended to exploit them, but, when considered together with evidence about the circumstances in which children are smuggled into the UK and put to work cultivating cannabis, there is compelling evidence that they are not being given adequate protection by the UK authorities.

These cases suggest that the police and Crown Prosecution Service have not responded to cases involving Vietnamese children in accordance with the Convention. There is an urgent need for the UK Government to order a review of such cases, to ensure a coherent interpretation of both the UK's laws on the issue of forced labour and human trafficking and international standards that have been ratified by the UK, including the Council of Europe's conventions on both human rights and trafficking in human beings and relevant provisions of the UN *Convention on the Rights of the Child*, such as those in Article 39 concerning the requirement to take measures to promote the recovery of children from neglect, exploitation or abuse and their social reintegration.

Conclusion

The Monitoring Group reviewed here whether the implementation of the Convention has improved the investigation of the crime of trafficking and the prosecution of those who commit these crimes. It showed how the understanding is still limited with respect to the complexities of trafficking, especially when debt bondage occurs and in cases involving forced labour and domestic servitude and when children are forced to work and/or to commit offences while in a trafficking situation. Appendix 5 section d presents further information on the obstacles encountered when prosecuting traffickers.

Chapter 8: A National Rapporteur or ‘Anti-trafficking watchdog’

Standards set by the Convention

Article 29.4 of the Convention requires State Parties to “consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements”.¹³⁰

The *Explanatory Report* points out (paragraph 298) that, “The institution of a national rapporteur has been established in the Netherlands, where it is an independent institution, with its own personnel, whose mission is to ensure the monitoring of anti-trafficking activities. It has the power to investigate and make recommendations to persons and institutions concerned and makes an annual report to the Parliament containing its findings and recommendations”.

No such independent institution was performing this role in the UK by April 2010. While the Government’s Inter-Departmental Ministerial Group may have been monitoring the performance of the NRM, this was in a management and supervisory role, not as an independent monitor or watchdog.

The view of the UK Authorities

“The modern-day slavery watchdog would act as a central repository for all information on human trafficking. It would be charged with collecting facts, figures and statistics, monitoring weaknesses, speaking up for NGOs, ensuring the adequacy of victim accommodation, checking that the guardian ad litem system was working properly and the like...Its task would be to see that Government agencies deliver on outlawing human trafficking.” Antony Steen MP, House of Commons, 20 January 2010¹³¹

Both the Government Minister responsible until April 2010 for policy on human trafficking, the Under-Secretary of State for the Home Department, Alan Campbell MP, and a committee of MPs have suggested that the appointment of a National Rapporteur is unnecessary. However, it is not clear that they have actually considered the advantages that independent scrutiny and public reports on the UK Government’s anti-trafficking initiatives would bring.

In response to a suggestion by Anthony Steen MP, that a “national watchdog” should be appointed on issues related to slavery, Alan Campbell MP told the House of Commons on 20 January 2010 that, “[W]e agree with the conclusions of the Home Affairs Committee, which stated in its recent report that a national rapporteur would not benefit data collection and that such an introduction would merely ‘add yet another organisation to the multitude involved in analysing and combating trafficking’”.¹³²

During the year after the NRM was set up, the UKHTC published information about cases referred to the NRM. While the data collected on the in-referrals to the NRM for the first time confirmed high proportions of presumed trafficked persons from West Africa and cases of labour trafficking, no details were published about the decisions made in response or the support offered to those found to have been trafficked. The information in this report about ‘reasonable grounds’ and conclusive decisions, and about the time taken to reach decisions, was obtained as a result of Parliamentary Questions and *Freedom of Information* requests. The responses to questions were essential to build up a picture of how the NRM was functioning.

¹³⁰ A much earlier EU Ministerial Declaration made a similar point. At an April 1997 EU Ministerial Conference in The Hague on the question of trafficking in women for the purpose of sexual exploitation, the resulting Declaration specified that EU Member States should “Provide or explore the possibilities for the appointment of national rapporteurs, who report to Governments on the scale, the prevention and combating of trafficking in women” (point III.1.4 of *The Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation*).

¹³¹ Anthony Steen MP, House of Commons debates, Hansard, 20 January 2009: Column 110WH, accessed on 19 March 2010 at www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100120/halltext/100120h0007.htm

¹³² Alan Campbell MP, Under-Secretary of State for the Home Department, House of Commons debates, Hansard, 20 January 2009: Column 126WH, accessed on 19 March 2010 at www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100120/halltext/100120h0009.htm

Oversight by other UK institutions

In the absence of scrutiny by a specialist watchdog, the UK's Equality and Human Rights Commission could take an interest in abuses of human rights which occur as a result of the way the NRM is organised or as a result of other anti-trafficking policies. This Commission was active in 2009 in investigating abuses of workers' rights in specific sectors of the economy. However, it has not yet turned its attention to investigating the impact of Government policies and the procedures of statutory agencies on trafficked persons. If the Government continues to refuse calls to appoint a National Rapporteur or Anti-Trafficking Watchdog, it would be appropriate for the Equality and Human Rights Commission to carry out such an investigation.

In early 2010 the Office of the Children's Commissioner for England was taking an interest in the issue of children from overseas arrested for working in cannabis factories, convening relevant statutory agencies and NGOs to identify what abuses of human rights were occurring and how these could be resolved. This is important work but does not replace the task of monitoring official responses to all cases that might involve child trafficking.

Since its inception the UKHTC was supposed to increase the knowledge about the scope of trafficking in the UK. In May 2010, there is still a lack of an improved picture about the extent and nature of trafficking in the UK and an evaluation of responses. In May 2009, the UKHTC was criticised by the Home Affairs Select Committee for not making progress in data collection. The Monitoring Group found no evidence that this has improved.

This raises the question of whether an independent Anti-Trafficking Watchdog, based on the model of the Dutch National Rapporteur on Trafficking in Human Beings, with statutory power to request information from the police, the immigration authorities, social services and NGOs and to report to Parliament would not be better suited and more cost-effective.

Chapter 9: Conclusions and Recommendations

*“The way it’s written, it’s great. It sounds great. And that is why it’s such a shock to discover how it operates in practice....”*¹³³

Conclusions

This chapter reviews the main conclusions of the Monitoring Group and whether the UK is meeting its obligations under the Convention.

General conclusions

Members of the Monitoring Group welcomed in April 2009 the implementation of the Convention and hoped the introduction of the NRM would bring about better coordination of referrals in general, of assistance as well as protection. This research unfortunately indicates otherwise.

In the case of adults, the research suggests that the NRM put too much emphasis on issues concerning immigration status rather than the fact that the individuals whose cases were the subject of referrals were potentially victims of crime. There is a general concern that the NRM is simply an extension of the UKBA’s activities, rather than a procedure to improve protection and assistance for individuals who have been abused and exploited.

This tendency to see the issue of trafficking from the perspective of immigration has been long standing in elements of Government. As noted above, up to the signing of the Convention trafficking in human beings had been referred to by Government Ministers as “organised immigration crime”. These references had the effect of categorising the offences committed as crimes against the security of the State, rather than the security of the person. Unfortunately this implied that respect and protection of the rights of individuals who were trafficked was secondary to the State’s concern about guarding its borders and excluding irregular migrants. Indeed, when a first law to punish human trafficking was debated in Parliament in 2002 and an amendment proposed introducing a ‘reflection delay’ for women who had been trafficked, the Government’s representative in the House of Lords, Lord Filkin, objected, noting that, “*An automatic reflection period could undermine immigration control, hold up criminal proceedings and provide an incentive for people to come to be trafficked in the UK*”.¹³⁴

The introduction of the NRM and the associated reflection period was expected to contribute to increasing prosecutions of traffickers. This has not happened.

There are specific and serious criticisms of the NRM as far as children are concerned: that it has no added value for children but has sometimes been detrimental to them, for example by pre-empting existing systems to safeguard and protect children.

We believe that the NRM is failing to treat those who have been trafficked as victims of crime and places too much emphasis on scrutinising them, rather than on protecting them and contributing to bringing traffickers to justice.

Responding to the specific research questions raised by the Monitoring Group

At the outset the Monitoring Group set out to answer a series of questions, which are reviewed below.

Is the UK meeting its obligations under the Convention?

In numerous respects the UK is not yet meeting its obligations under the Convention. This is outlined in greater detail in appendices 4, 5 and 6 below. The Government seems not to have addressed the entirety of the Convention: its obligation in the areas of prevention, protection and prosecution. These three are closely intertwined. Consequently, the responses also need to be linked.

¹³³ Interview 18 on 13 October 2009 with legal representative.

¹³⁴ Lord Filkin, responding to a proposal to amend the UK’s 2002 law on trafficking by providing more substantial protection measures, *Hansard*, House of Lords, 10 October 2002: Column 547.

The research suggests that the UK is creating a 'hierarchy' of victims, and seems to be discriminating against certain categories of victims, such as those who were trafficked before the Convention came into force, or those coming from particular countries or regions.

The analysis showed that one of the key reasons is the incorrect application of the trafficking definition when assessing who is a victim of trafficking. This impedes identification, but was also found to undermine the possibility of prosecution in some cases.

The system introduced in the UK also does not seem to be ensuring non-punishment of victims of trafficking. Despite existing guidance from the Crown Prosecution Service, victims of trafficking are still routinely prosecuted for offences they committed while under coercion.

The Government is also failing to provide access to compensation to those trafficked. In the first instance by failing to provide information about compensation to those identified, and secondly by preventing them from staying in the UK to pursue compensation.

Are anti-trafficking policies human rights-centred?

"The whole approach that we take to human trafficking is a victim-centred approach. It is the basis for our Action Plan which we have introduced in 2007 and we have refreshed annually since. When we look at human trafficking it is crucial that we begin with the focus clearly on victims and the rights of victims. I have to say, however, that is sometimes quite a difficult thing to do, where people will claim to be the victims of traffickers when they were actually part of the problem in the first place, and sometimes victims are reluctant to come forward and acknowledge that they are victims...Whilst we always seek to emphasise the importance of a victim-centred approach, it sometimes throws up cases that are very difficult to resolve where it is not always clear who is the victim and who is the perpetrator." (Alan Campbell MP, Parliamentary Under-Secretary of State for the Home Department, to the Joint [Parliamentary] Committee on Human Rights on 26 January 2010).¹³⁵

The Government Minister responsible for anti-trafficking policy stated in January 2010 that the UK had a "victim-oriented approach" with "the focus clearly on victims and the rights of victims". Elsewhere the emphasis in public information issued by the Home Office has also been on protecting victims: "The Government is clear that the response to trafficking should be primarily about protecting victims of crime"¹³⁶ and is "committed to identifying and supporting victims of all forms of human trafficking - men, women and children".¹³⁷

These were statements of intent, so it seems important to clarify what is understood, both by the UK authorities and by anti-trafficking specialists elsewhere, by the phrase 'victim-centred approach' and also by references to a 'human rights approach.'

According to the UN, the human rights-based approach to combating trafficking in human beings requires that, "The human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims".¹³⁸ This principle relates to the obligations of States to prevent, investigate and prosecute traffickers and to assist and protect trafficked persons. It suggests that, when States make decisions about their priorities with respect to anti-trafficking measures and other related issues, considering issues about migration and the effectiveness of the criminal justice system as well as human rights, priority must be given to the human rights obligations accepted by the State under international human rights law.

¹³⁵ Oral evidence given by Alan Campbell MP, Parliamentary Under-Secretary of State Home Office, response to question 7, HC 326-I, Joint [Parliamentary] Committee On Human Rights, *Human Trafficking*, Tuesday 26 January 2010, HL Paper 88/HC 326-I, published on 24 March 2010, accessed on 31 March 2010 at www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/88/88.pdf

¹³⁶ *Trafficking Questions and Answers*, page 5, accessed on 25 January 2010 at www.crimereduction.homeoffice.gov.uk/humantrafficking005qanda.pdf

¹³⁷ *Council of Europe Convention on Human Trafficking*, page 1, accessed on 25 January 2010 at www.crimereduction.homeoffice.gov.uk/humantrafficking005overview.pdf

¹³⁸ UN High Commissioner for Human Rights, *Recommended Principles on Human Rights and Human Trafficking*, Principle 1, in *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Office of the UN High Commissioner for Human Rights, New York and Geneva, 2002.

Giving primacy to human rights also implies that anti-trafficking measures should not “adversely affect the human rights and dignity of persons”.¹³⁹ To find out which measures have adverse effects (if any), it is essential that the relevant authorities evaluate the impact of their anti-trafficking measures in order to check their effects, both expected and unexpected (and, if appropriate, to take remedial action to correct any unwanted effects). Responsibility for doing so lies with individual agencies, but can also be seen to lie with the political authority that has overall responsibility for anti-trafficking policy in the UK, the Home Secretary. Some government departments indicated that they had carried out evaluations.¹⁴⁰ However, it is not apparent that wider impact assessments have been carried out to check whether current anti-trafficking measures are having adverse effects.

Do current strategies protect the rights of trafficked persons and promote their social reintegration?

The priority given by the NRM to vetting the credibility of presumed trafficked persons has resulted in the importance of providing services (and coordination between such services) being sidelined. Whereas the term ‘referral’ was originally proposed on account of its use in systems involving health and social care, where patients and clients are ‘referred’ to the various services they need, in the UK it has ended up meaning referral to a central government vetting authority. The priority that a referral system should lead at the outset to a proper needs assessment has been marginalised and the referral system itself has no coordination. As a result, to get access to particular services, presumed trafficked persons need to have a specific agency or individual willing to link them up with all such services, acting as their advocate. Otherwise their access to services is usually patchy. This is a clear symptom that the NRM and wider referral systems are not acting as such.

The policies and strategies in the UK do not pay attention to the long-term social reintegration of trafficked adults or children. In the case of children, the practice of granting presumed trafficked children discretionary leave to remain until shortly before their 18th birthday means that a temporary solution is given precedence over a durable solution. In the case of adults, a statement by the Minister of State for Borders and Immigration in January 2010 indicated that the authorities do not try to “track” what happens to trafficked persons beyond their reflection period, unless they are foreign nationals who are instructed to leave the UK.¹⁴¹ No attempts are made by the UK authorities to check what happens to trafficked persons who are foreign nationals after they leave the UK (whether they leave voluntarily or not).

Do current policy and practice guarantee gender equality?

The UK authorities have not yet given noticeable consideration to the obligations in the Convention concerning gender. In addition to calling for “gender mainstreaming” in the context of prevention, the Convention calls for the promotion of “gender equality” in the context of all the measures to protect and promote the rights of victims (Articles 10 to 16). The *Explanatory Report* (paragraph 54) points out the wider implications of promoting gender equality: “Gender equality means an equal visibility, empowerment and participation of both sexes in all spheres of public and private life...Equality must be promoted by supporting specific policies for women, who are more likely to be exposed to practices which qualify as torture or inhuman or degrading treatment (physical violence, rape, genital and sexual mutilation, trafficking for the purpose of sexual exploitation)”.

At the level of identification, organisations providing support to women trafficked into prostitution are concerned that, in some areas, frontline police have not received sufficient training to respond appropriately when there are signs that an individual has been trafficked. However, there is also a concern that the police in general do not respond appropriately when information about cases of domestic servitude or forced labour, involving men as well as women, is brought to their attention.

Concerning the level of the assistance available to trafficked persons, dedicated accommodation for trafficked women is, in theory, available in England, Wales, Northern Ireland and Scotland. In practice, space in appropriate accommodation is not always available and some trafficked women have been housed in places which were not suitable.

¹³⁹ *Ibid.*, Principle 3, “Anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum-seekers”.

¹⁴⁰ From a phone conversation and emails exchanged with a representative of a Northern Ireland Department in May 2010.

¹⁴¹ Phil Woolas MP, Minister of State for Borders and Immigration, House of Commons debates, Hansard, 12 January 2010: Column 853W, accessed on 19 March 2010 at www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100112/text/100112w0009.htm#10011271001149

Do anti-trafficking measures implemented in the UK follow a child-sensitive approach?

In setting up the NRM the UK authorities decided not to task local authority children's services to act as the Competent Authority in cases of children who may have been trafficked, despite their expertise in child protection and their statutory duty to safeguard children.

Several of those concerned about the cases of trafficked children expressed the view to the Monitoring Group that it was not appropriate for the Home Office to be the government department with lead responsibility concerning trafficked children, and that its place should be taken by relevant government departments responsible for children. Similar criticisms were voiced of the UKHTC and UKBA staff being required to make decisions about children who may have been trafficked, as they were viewed as having insufficient expertise in relation to children.

Before the NRM came into effect there were already functioning referral systems for children who were suspected of being trafficked, through child protection structures, even though there was no standard system for adults. These child protection structures focused responsibility on local authority children's services. To a significant extent, these have been undermined by the NRM, which has moved some responsibility from local to national level.

By the beginning of 2010, it was still far from obvious that the decision to require agencies with no specialist knowledge of child trafficking or child protection and safeguarding to make decisions about the cases of children was in the best interests of children. Indeed, shortly before the NRM was set up, a general review of child protection in England (by Lord Laming) recommended that procedures concerning children should not be a sub-set of those established for adults. "Children are not 'little adults' and need particular support both as children, and for the particular condition or situation they find themselves in at any given moment in time".¹⁴²

How could the current knowledge base on human trafficking be improved?

The creation of the NRM has not yet reduced the need for individual organisations – law enforcement agencies, as well as NGOs – to monitor patterns of human trafficking and the experience of people who are trafficked, both to collect information about patterns of abuse committed by traffickers and to find out what happens to their victims afterwards. The regular publication of statistical data by the UKHTC (by SOCA from April 2010 onwards) was helpful, but gives only a very partial impression of the cases referred into the NRM.

When the UKHTC was set up in 2006, it did seem to be the Government's intention that the new centre should develop the UK's knowledge base about human trafficking. By April 2010, SOCA described the UKHTC as "a central point for the development of expertise and cooperation in relation to the trafficking of human beings".¹⁴³ However, relatively little up-to-date information about trafficking patterns, about protection measures or about successful prosecutions was being made available publicly by the UKHTC.

A specific criticism made to the Monitoring Group was that the NRM, as organised in 2009, was not in a position to obtain or share with others a more complete picture of the extent of human trafficking in the UK.¹⁴⁴ Nor was it clear that this complete picture was available to the UKHTC. In particular, the existence of the NRM created an impression that data about all presumed trafficked persons was being gathered, when there were trafficked adults who did not give their consent to submitting a referral. There were also support organisations that reached the conclusion during the year that it was not in the interests of some trafficked persons to have their cases referred to the NRM.

It is clear to the Monitoring Group that the knowledge base that is required on human trafficking in the UK must endeavour to include all cases that involve forced labour, servitude (including domestic servitude) or the exploitation of the prostitution of others. Equally, there is a need to record all prosecutions and convictions related to cases of human trafficking or these forms of exploitation, whatever the actual charge is that results in a conviction. There is an urgent need to establish whether the UK's laws against human trafficking and the associated forms of exploitation are fit for purpose, but information issued by the UKHTC about convictions (which, by April 2010, only concerned convictions up until June 2009) does not allow this, for it does not relate to a wide enough range of convictions.

¹⁴² Lord Laming, *The Protection of Children in England: A Progress Report*, London, March 2009, chapter 2 (2.2).

¹⁴³ 'About the UKHTC', accessed on 12 May 2010 at www.soca.gov.uk/about-soca/about-the-ukhtc

¹⁴⁴ Focus group discussions in Wales, Scotland and Northern Ireland.

How can civil society monitor anti-trafficking responses by government institutions effectively?

The experience of collecting information for this report demonstrates that organisations based outside official structures can build a picture of the UK Government's anti-trafficking responses, but only if they invest considerable time and energy in asking for specific items of information by invoking the *Freedom of Information Act 2000* or urging elected representatives to ask Parliamentary Questions. Even so, the information obtained remains incomplete, particularly regarding decisions made by Competent Authorities (and the reasons behind decisions).

The Monitoring Group was grateful to both the elected representatives who asked specific questions and to the officials who patiently answered the questions put to them during interviews and otherwise.

The process of seeking information revealed that significant data about various aspects of the treatment of presumed trafficked persons is not recorded systematically by statutory agencies. This refers in particular to the assistance provided to trafficked persons and what happens to them after any reflection period. In the absence of such information, it is impossible for the UK authorities to assess what the impact of their policies has been on trafficked persons. Such an assessment is an essential part of a victim-centred approach and a human rights-based approach to combating trafficking in human beings.

Would the appointment of a National Rapporteur or Anti-Trafficking Watchdog improve policy implementation and monitoring?

The UK Government's view that the UK does not require a National Rapporteur is surprising in view of the number of changes in legislation and policy that have been made with respect to human trafficking and related forms of exploitation since 2002 (or earlier, if reforms in 1998 are also taken into account, which were intended to stop migrant domestic workers being subjected to forced labour). At the beginning of 2010 several new laws were still due to come into force and it seemed likely that changes would continue to be made to policy and practice on the issue of human trafficking.

A National Rapporteur could potentially monitor the anti-trafficking activities of State institutions and the implementation of national legislation more independently than the UKHTC, and could provide evidence for government and anti-trafficking agencies to take into account when considering further changes.

Although the Monitoring Group obtained relevant information on some issues for this report, the police, UKBA and other statutory organisations cannot divulge confidential information to an unofficial body. The Monitoring Group cannot ask that particular data be collected or collated. An external Monitoring Group can consequently play only a limited role.

The concern expressed by Under-Secretary of State for the Home Department, Alan Campbell MP, that there are too many agencies involved "in analysing and combating trafficking"¹⁴⁵ appears understandable at first sight, as numerous organisations have a role to play in protecting or assisting people who have been trafficked and the Government has so far had difficulty in establishing a meaningful form of coordination (and the NRM does not perform this function). Rather than being a justification for not appointing a National Rapporteur, this seems to the Monitoring Group to be a reason why an independent institution with full access to official information should assess the extent to which tensions or even rivalries between existing statutory agencies are undermining efforts to stop human trafficking and advise on how coordination can be improved.

Concern about the role performed by the UK's Competent Authorities

When the UK authorities considered what procedures to put in place to fulfil the UK's obligations under the Convention, prior to setting up the NRM in 2009, they had choices about the level at which presumed trafficked persons were to be identified initially (so that they could be allowed a reflection period and given assistance with government financial support) and the institutions they would entrust with this task.¹⁴⁶ The

¹⁴⁵ Alan Campbell MP, Under-Secretary of State for the Home Department, House of Commons debates, Hansard, 20 January 2009: Column 126WH, accessed on 19 March 2010 at www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100120/hall-text/100120h0009.htm

¹⁴⁶ In some European countries, such as Italy, initial identification has been carried out for some time at local level without being scrutinised by a central authority. In others, such as the Netherlands, cases are referred to a single organisation, *Coördinatiecentrum Mensenhandel* (CoMENSHEA), Human Trafficking Coordination Centre, a former NGO, that acts as a hub in the referral system and shares information about referrals, but which does not vet them or decide who should be allowed to stay in the country (www.comensha.nl).

UK opted to keep tight central control on the first step of identification (leading to 'reasonable grounds' decisions). Even decisions at the first step of the identification process look like a judgment, rather than part of a procedure to give priority to ensuring that adequate protection and assistance are available to people who are entitled to it.

In effect, the notion that a person who has been trafficked has experienced abuse and requires time to recover before being exposed to the rigours of an immigration system that is designed to identify and remove people with no leave to remain in the UK is still not accepted by the UK authorities.

The 'competent authorities' mentioned in the Convention include the various authorities that come into contact with persons who have been trafficked and which are empowered to provide services to them or to make decisions affecting them. The Convention places obligations on all these authorities, whereas the way the term is used in the UK, referring exclusively to agencies which have a vetting role, undermines this.

To some observers, it appears odd that two separate agencies should share the responsibilities of a Competent Authority. On the one hand this appears to increase the risk that the consistency and coherence that a single authority might guarantee are not likely to be delivered. On the other hand, it keeps decision-making in the hands of a few, rather than devolving responsibility for initial identification of presumed trafficked persons (i.e. 'reasonable grounds' decisions) to organisations which are in direct contact with them.

Other comments about the performance of the two Competent Authority agencies concerned:

- a perceived high turnover in their staff, preventing, for example, the development of expertise in the UKBA's regional offices;
- A lack of capacity in certain regional offices to deal with new responsibilities arising from the NRM, in addition to their usual responsibilities;
- A perception that officials in the two agencies tended to dismiss the expertise on human trafficking that other organisations have developed (sometimes over many years) and their knowledge of the particular situations that presumed victims routinely experience.

The first two defects could potentially be resolved by changes in personnel policies and a determined effort to build up expertise in teams focusing on human trafficking. The third requires addressing the relations between First Responders, on the one hand, and the UKHTC and UKBA, on the other.

Recommendations

The following recommendations are based on an assumption that the current NRM will continue to function in 2010, in which case immediate remedial action is required to tackle the most glaring injustices caused by the way the NRM functions in the UK. In the medium term the Monitoring Group's assumption – and recommendation – is that more substantial reforms are required in the way the Convention is implemented in the UK, not only in the NRM but also in other provisions concerning trafficked persons. The UK authorities should take into account that the Convention as a whole cannot be implemented only through the NRM, as the Convention includes measures addressing prevention of trafficking, as well as prosecution of those responsible for trafficking.

Immediate action required to remedy injustices

It is an immediate priority to make it faster and more efficient for adults who are the subject of a referral by a First Responder to receive the protection and assistance associated with a reflection period.

Current procedures make this difficult to achieve, for it is not in the interests of trafficked persons for First Responders to make a referral on the basis of the incomplete information about their circumstances that is usually all that is available in the first few days in which they are in contact. Nor is it in the interests of trafficked persons for a Competent Authority to assess their credibility and make rapid decisions on the basis of incomplete information.

While the NRM continues to rely on two central agencies (the UKHTC and the UKBA) to take decisions on both 'reasonable grounds' and 'conclusive grounds', the priority that they attach to assessing the credibility and immigration status of individuals referred to them before they are even the subject of a

'reasonable grounds' decision to grant them a reflection period should be reduced, so that individuals who are the subject of a referral by a First Responder benefit from the protection and assistance associated with a reflection period as soon as possible.

We recommend that the Home Office should take the following steps:

1. Stop vetting the credibility of an individual's claims prior to making a 'reasonable grounds' decision. As vetting the credibility of an individual's account about their experience prior to making a 'reasonable grounds' decision has frequently resulted in delays in a Competent Authority recognising someone as a presumed trafficked person, both Competent Authorities should be instructed so that such decisions are made within five days (as intended) and so that the assistance to which presumed trafficked persons are entitled is made available promptly.

2. Instruct the police and UKBA not to question presumed trafficked persons during a reflection period about their possible involvement in committing a criminal or an immigration related offence (so that the reflection period functions as intended as a period for trafficked persons to recover and reflect whether or not to cooperate with the authorities).¹⁴⁷

3. Instruct the UKBA to put a temporary stop to any fast track immigration or asylum proceedings, with respect to anyone who is identified as a presumed trafficked person by a 'reasonable grounds' decision.

4. Develop guidance for First Responders on how to fill in referral forms.

5. 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 (through an Employment Tribunal or other means) to facilitate access to compensation as required by the Convention.

6. Introduce a formal right of appeal for individuals who are the subject of negative decisions by a Competent Authority.

7. Appoint a National Coordinator responsible for overseeing referral of all cases to assistance and support and begin the process of developing national standards for all forms of assistance to trafficked persons.

8. Address funding problems which currently result in organisations providing services to presumed trafficked persons having to finance significant amounts of assistance from their own funds. The amounts should be reduced if delays in making positive 'reasonable grounds' decisions are reduced (see Recommendation 1). In particular, this should include addressing the need to fund interpreters engaged by First Responders.

Concerning children, we recommend that the Home Office, together with branches of Government especially responsible for child protection (i.e. the Department for Education (DE) for England and Wales, the Department of Health, Social Services and Public Safety for Northern Ireland and the Scottish Government Education Directorates), should:

9. Restructure the National Referral Mechanism for cases of children who may have been trafficked, giving the authority to make both the reasonable grounds and conclusive decisions to the services responsible for child protection based in local authorities, ensuring that appropriate guidance is provided to children's services throughout the UK. Children's Services could then notify UKBA of their decision.

10. Issue a reminder to First Responders and Competent Authorities that under 18's are entitled to special measures to protect children. This should be done together with the appropriate government departments responsible for children and be addressed to agencies responsible for

¹⁴⁷ Presumed trafficked persons may still want to talk, before or during a reflection period, to the police about offences in which they have been a victim of crime or a witness to crime.

considering the cases of young people who may have been trafficked and who claim they are under 18 (or who are suspected of being under 18). The agencies should be reminded to make a presumption that the victim is a child, when the age is uncertain and there are reasons to believe that the victim is a child (as required by Article 10.3 of the Convention).

11. Develop specific training for foster carers or managers of social services accommodation concerning children who are at a significant risk of going missing. The Department for Education should ensure all local authorities make this training available promptly. Local authorities should ensure that children who are presumed to have been trafficked are placed in accommodation that really is safe and that a larger proportion (than in 2009) of children are housed with foster carers.

The branches of Government responsible for justice (the Ministry of Justice, Northern Ireland's Department of Justice and the Scottish Government's Criminal Justice Directorate) should:

12. Review the interpretation of 'duress' in the cases of both adults and children and give revised guidance to the relevant prosecution services (the Crown Prosecution Service for England and Wales and the Crown Office and Procurator Fiscal Service for Scotland) on the interpretation of 'duress'. In particular, attention should be given to the evidence available about the debts owed by individuals convicted of cannabis farming, in order to assess whether some were in debt bondage and were being subjected to forced labour or servitude without this being recognised by courts in the UK. In the cases of children, attention should be given to assessing whether all or most children who are smuggled into the UK to work on cannabis farms have been trafficked.

In general, we recommend that the Home Office and other relevant statutory agencies should:

13. 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. Training should focus on cases which have already arisen in the UK, rather than providing them with general information about human trafficking.

The UK authorities should also take care to distinguish between a system designed to deliver protection, which requires adults who apply for protection to give consent to entering a referral system, from systems to collect intelligence about trafficking and to estimate the number of people who have been trafficked. While it is appropriate for both adults and children (via their support workers or legal representatives) to give consent before they are referred, it is important that the gathering of intelligence and statistics should not be limited to cases in which individuals consent to their referral, thereby excluding cases of people who have genuinely been trafficked but who have concluded that it is not in their best interests to make a referral.

Action in the medium term

In the medium term, it is essential that the UK authorities change the way they are implementing the Convention (notably through the framework of a NRM). The aim of changes should focus on the intended purpose of a referral system – to refer presumed trafficking persons to specific services and provide adequate levels of coordination – rather than keeping the emphasis on vetting them because of a preoccupation with the credibility of their claims or a lack of confidence in the abilities of First Responders. In modifying the referral system, priority should be given to identifying and building on the strengths of existing structures and services, rather than sidelining them, which seems to have been the effect of the current NRM.

Reforming the structure and functions of a referral system

1. Put the responsibility for determining who it is 'reasonable' to suspect has been trafficked with the First Responders and other frontline organisations. This action would have the effect of devolving responsibility for making 'reasonable grounds' decisions to the 'competent authorities' as defined by the Convention. The responsibility for screening cases at the stage of making 'reasonable grounds' decisions should be removed from centralised agencies (the UKHTC and the UKBA) and put into the hands of organisations which are in direct contact with presumed trafficked persons (e.g. at the level of a local authority, building on the models for safeguarding and assisting children operated by local authorities throughout the UK).

2. Increase the number of organisations which currently have the status of First Responders, so that other frontline organisations can provisionally identify individuals as presumed trafficked persons and refer them to appropriate services, including specialist children's NGOs in the case of children. A central agency could set standards for such organisations to observe, to prevent them abusing their authority to identify presumed trafficked persons.

3. Introduce coordinated referral systems for trafficked persons at local level, i.e. systems which are intended to allow individuals with particular needs to be referred to organisations that provide services to meet their needs. In this context, a 'coordinated referral system' does not mean one that exercises centralised control. It should be a multi-agency referral system which incorporates law enforcement and other statutory agencies, local authority services, health professionals, NGOs and other civil society organisations (such as faith-based organisations that provide services to trafficked persons).

4. Consider creating local level multi-agency panels responsible for protection and services (on a pilot project basis initially), along the lines of those established already to respond to threats of violence against women (Multi-Agency Risk Assessment Conference, MARAC) or abuse of children (Team Around Children, TAC).

5. Establish at national level the standards required for the delivery of protection and assistance at local level and ensure accountability to these standards.

6. 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. Once a presumed trafficked person's reflection period is over, involve agencies such as the UKHTC and UKBA, in working with local level referral systems in determining who (among presumed trafficked persons) requires longer term assistance or protection (and should be granted a further residence permit) and whose cooperation would be welcomed by law enforcement officials in order to bring prosecutions.

7. Develop the capacity to carry out individualised risk assessments when a presumed trafficked person (adult or child) may return to their home country, notably by intensifying contacts between the relevant UK authorities and their counter-parts in the countries from which adults or children have been trafficked, and identifying others with appropriate expertise to assess the risks surrounding the return of a particular individual.

Provisions of the law

8. Ensure the police and prosecutors investigate the possibility that migrants suspected of committing offences may have been trafficked (in cases involving illicit activities such as farming cannabis or pick-pocketing) and are aware of suitable investigative techniques to use when suspects are unwilling to disclose details of their experience.

9. Review whether the provisions of UK legislation to protect individuals in debt bondage are adequate, to ensure that individuals in debt bondage are not returned to situations where those controlling their debt can maintain them in their 'servile status' (servitude or forced labour).

Children

10. Introduce a system of legal guardians with explicit responsibility for representing a child's best interests.

11. 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.

Monitoring and Evaluation

12. Appoint an Anti-Trafficking Watchdog with the authority to access all information required to independently monitor the implementation of the Convention by the UK Government, including all responses to prevent human trafficking, to protect victims and to prosecute traffickers. This body should report to the UK's Parliament and to the Parliaments or Assemblies in Scotland, Wales and Northern Ireland and give advice to policy makers and be modelled on the Dutch National Rapporteur on Trafficking in Human Beings.

13. Conduct independent evaluations of the impact of prevention activities funded by the Home Office, such as the Blue Blindfold campaign, and publish the evaluation results.

14. Ask the Ministry of Justice to collect statistics about the number of suspected traffickers who have been prosecuted on charges other than human trafficking, **in order to assess whether legislation against human trafficking is fit for purpose and with a view to possibly amending it. It is important to assess whether, as a result of difficulties in obtaining evidence to back up trafficking charges, suspected traffickers are escaping with lighter sentences or avoiding conviction (or even prosecution) altogether.**

Appendix 1: Methods and Sources

a) Terminology

When referring to people who might have been trafficked, texts in the UK generally refer to 'possible victims of trafficking'. This report uses the shorter term suggested by the Organization for Security and Co-operation in Europe (OSCE), 'presumed trafficked person'. Other terms used in the report are explained in a Glossary at the end.

b) Sources

This report was compiled with information from public sources and from some 90 interviews with professionals engaged in anti-trafficking work as well as cases reviewed. The information was obtained over seven months, from September 2009 to April 2010. Throughout this time a researcher was employed by the Monitoring Group, supported by the Group's coordinator.

Public information

Between April 2009 and April 2010 UK statutory agencies published a considerable number of manuals and guidelines on their websites, mainly outlining how the National Referral Mechanism (NRM) was to be put into practice. These included: a Toolkit issued by the Criminal Justice System; specific instructions to staff issued by the UK Border Agency (UKBA); and details about the intended referral procedures issued on the websites of the UK Human Trafficking Centre (UKHTC) and the Home Office.

The UKHTC also made public, on a quarterly basis and until December 2009, a limited amount of information about "in-referrals" (i.e. anonymous information about the origins of more than 500 people whose cases were referred to a Competent Authority). However, the UKHTC's website did not provide information about what happened to these referrals, for example, how many received positive 'reasonable grounds' or conclusive decisions, that is, how many trafficked people has the system as such identified.

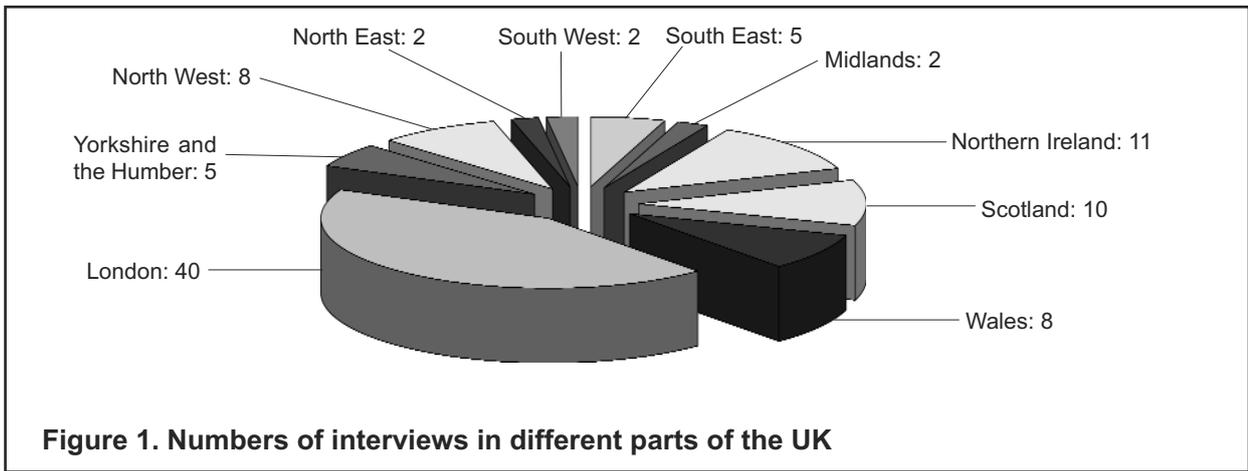
Further information about human trafficking came from Parliamentary debates in Westminster and at a session of the House of Commons and House of Lords Joint Human Rights Committee in January 2010. At the suggestion of the Monitoring Group, various MPs asked Parliamentary Questions which revealed further statistics and information about the the NRM. At the beginning of 2010, the Monitoring Group invoked the *Freedom of Information Act 2000* to obtain information from various public bodies. The Monitoring Group initiated a total of 36 *Freedom of Information* requests of which 23 were answered on time to include in this report and reviewed over 40 Parliamentary Questions. The Group also examined about a dozen other *Freedom of Information* requests made public in the period between April 2009 and April 2010.

Semi-structured Interviews

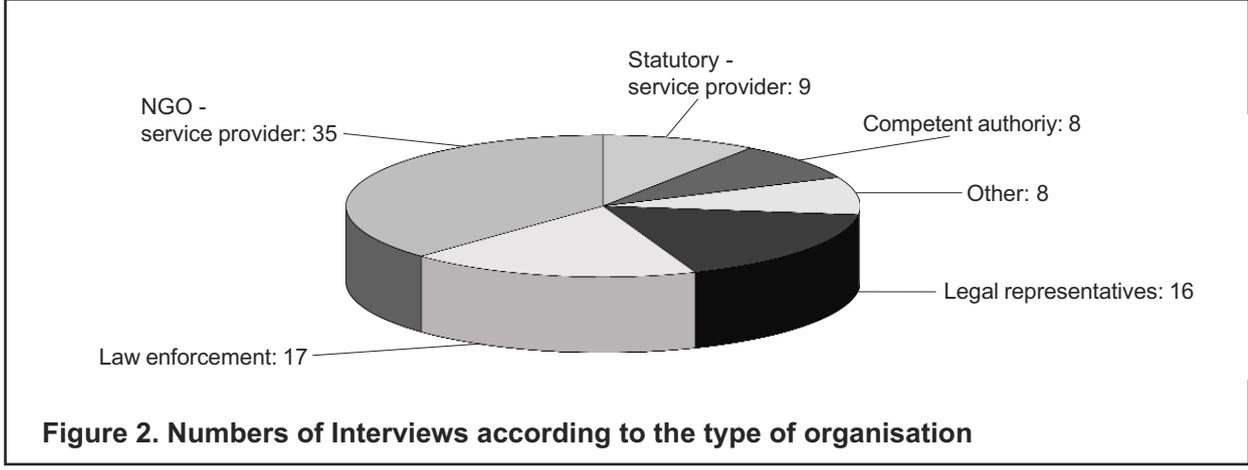
The Monitoring Group used a combination of two sampling methods: *purposive and snowball* sampling to select the agencies and individuals we interviewed. For the purposive sampling, we approached agencies wherever they were known to have responsibilities or a commitment to deliver any of the obligations under the Convention. These agencies were identified using the knowledge of the Monitoring Group. In turn, these agencies were asked to identify other relevant agencies in the anti-trafficking field, who were then encouraged to contribute to the project (*snowball* sampling). Information on agencies and individuals was stored in a database.

Interviews with individuals from the agencies identified through either sampling method were conducted between September 2009 and February 2010. A total of 93 interviews were conducted. Figures 1 and 2 indicate how many interviews were conducted in different parts of the country and what types of organisation were involved.

The Monitoring Group guaranteed to maintain the anonymity of individuals who participated in semi-structured interviews (and the agencies they belong to). Prior to the interview and upon meeting, the researcher provided respondents with introductory information about the project and sought their written and informed consent, explaining how information obtained during the interview would be used and asking whether the interview could be digitally recorded. The Monitoring Group guaranteed that it would not disclose identifiable information about participants and would protect the identity of research participants



by anonymising information. In cases where direct quotes were to be used in this report, an assurance was given that these would not be attributed directly to them and only broad categories would be used to indicate the kind of agency that they represented and the geographical area in which they worked. Details on the 93 interviews are held in the Monitoring Group’s records. When information from interviews is cited in this report, we reveal the category of organisation that the interviewee belongs to, the date of the interview and Monitoring Group reference number, but not the identity of the person who was interviewed.



Call for evidence

A call for evidence was published through the Monitoring Group’s webpage¹⁴⁸ and distributed via newsletters and email lists of networks, coalitions and other groups working on anti-trafficking issues across the UK. The purpose of the written call for evidence was to stimulate responses from agencies and individuals in the UK that the Monitoring Group might not have reached otherwise. There were three different versions of the call for evidence: one general, a second specific to issues related to children and a third aimed at legal representatives (which was circulated by ATLeP and ILPA). Only a handful of responses to the general calls for evidence were received. Thanks to the assistance of ATLeP, the Monitoring Group received a total of 16 responses from legal representatives.

Focus Groups

Meetings were organised with anti-trafficking professionals in Belfast, Cardiff and Glasgow in order to obtain information about what was happening in Northern Ireland, Wales and Scotland respectively.

Together with interviews in Northern Ireland, Scotland and Wales, the focus groups revealed some of the ways in which responses to trafficked persons differed to responses in England. Statistics from official sources complemented this to give a somewhat fuller picture of national variations. It became clear that

¹⁴⁸ See Anti-Trafficking Monitoring Group at www.antislavery.org/english/what_we_do/programme_and_advocacy_work/anti_trafficking_monitoring_group.aspx

the focus groups served as awareness-raising and linking forums for the participating stakeholders.

Case-based information

The Monitoring Group comprises several organisations which provide support to trafficked persons and have the status of First Responders. While Monitoring Group staff did not seek to interview individuals who had been trafficked about their experiences while seeking protection and assistance in the UK, these organisations were able to provide examples from among the people they were assisting (described variously as 'service users' and 'clients'). The Monitoring Group received information about a total of 390 individuals: 254 of those concerned were identified after 1 April 2009 and 120 were referred to the NRM. This information was submitted by both members of the Monitoring Group and other organisations. The level of information provided depended on the confidentiality agreements each agency had and the degree of interaction each individual had with the supporting agency.

c) Data Protection and Storage

The protection of the privacy and confidentiality of trafficked persons was a primary concern for the Anti-Trafficking Monitoring Group. In accordance with the UK *Data Protection Act 1998*, the Information Commissioner was notified that the Monitoring Group was holding these data and information at Anti-Slavery International's office.

Monitoring Group staff had access to some records in which the actual identity of a trafficked person was noted. All such identifying details have been removed from the report.

Appendix 2: Review of UK law and practice related to trafficking

a) Legislation on Human Trafficking

The period from 2003 to 2007 saw the adoption of several new legislative measures in the UK concerning human trafficking.¹⁴⁹ The new legislation was adopted in the light of the UK's impending ratification of the UN Trafficking Protocol.¹⁵⁰

On 10 February 2003 a new set of offences of 'traffic in prostitution' came into force, under section 145 of the *Nationality, Immigration and Asylum Act 2002*. These offences were essentially a stop-gap measure and were soon replaced by broader offences of 'trafficking for sexual exploitation' created by sections 57-60 of the *Sexual Offences Act 2003* which came into force on 1 May 2004. The wording of the replacement offences was similar to that in the 2002 Act; they cover trafficking into, within or out of the UK for the purpose of committing sexual offences and attract a maximum sentence of 14 years' imprisonment. This Act also defines offences involving the use of children in the sex industry (sections 47-50). These offences are paying for sexual services of a child, causing or inciting child prostitution or pornography, controlling a child prostitute or a child involved in pornography and arranging or facilitating child prostitution or pornography.

Neither the 2002 Act nor the 2003 Act included any offences of trafficking for forms of exploitation other than sexual exploitation. Section 4 of the *Asylum and Immigration (Treatment of Claimants, etc.) Act 2004* introduced a new offence of "trafficking people for exploitation", i.e. forms of exploitation other than sexual exploitation, including forced labour, slavery and organ removal in violation of the Human Organ Transplants Act, 1989. It was couched in similar terms to the sexual trafficking offences, and covers trafficking to, within or out of the UK. Like the other trafficking offences it attracts a maximum penalty (on conviction on indictment) of 14 years' imprisonment and/or a fine.

Section 4 of the 2004 Act now contains the following definition of exploitation:

"For the purposes of this section a person is exploited if (and only if):

- (a) he is the victim of behaviour that contravenes Article 4 of the *Human Rights Convention*¹⁵¹ (slavery and forced labour),
- (b) he is encouraged, required or expected to do anything as a result of which he or another person would commit an offence under the *Human Organ Transplants Act* 1989 (c. 31) or the *Human Organ Transplants (Northern Ireland) Order* 1989 (S.I. 1989/2408 (N.I. 21)),
- (c) he is subjected to force, threats or deception designed to induce him-
 - (i) to provide services of any kind,
 - (ii) to provide another person with benefits of any kind, or
 - (iii) to enable another person to acquire benefits of any kind, or
- (d) a person uses or attempts to use him for any purpose within sub-paragraph (i), (ii) or (iii) of paragraph (c), having chosen him for that purpose that—
 - (i) he is mentally or physically ill or disabled, he is young or he has a family relationship with a person, and
 - (ii) a person without the illness, disability, youth or family relationship would be likely to refuse to be used for that purpose."

The final provision (d) of Section 4 was amended in 2009, after concern was expressed that the original wording implied that children could give consent to being subjected to one of the forms of exploitation

¹⁴⁹ At the beginning of 2002, the UK did not have any specific law prohibiting trafficking in human beings, nor any criminal law against forced labour. Traffickers could be prosecuted under laws relating to pimping and immigration offences (facilitation of illegal immigration). Criminals trafficking women into the sex industry were usually prosecuted under the *Sexual Offences Act* 1956, notably sections 30 and 31 (living off immoral earnings of prostitution), an offence associated with what the UN Trafficking Protocol (2000) and the European Convention refer to as "the exploitation of the prostitution of others".

¹⁵⁰ The UK signed the UN Protocol in December 2000, soon after it was adopted, but did not ratify it until February 2006.

¹⁵¹ The Council of Europe's *Convention for the Protection of Human Rights and Fundamental Freedoms* (1950), ratified by the UK in March 1951.

associated with human trafficking.¹⁵² The explanatory note attached to section 54 says that the revised wording “expands the definition of exploitation in the offence of trafficking...to cover use or attempted use of a person for the provision of services or the provision or acquisition of benefits of any kind, where the person is chosen on the grounds of ill-health, disability, youth or family relationship”.¹⁵³ The amendment followed a prosecution in 2008 for someone accused of trafficking a child in order to acquire benefits in the form of fraudulent social security payments (known as benefit fraud in the UK).

Scottish Legislation

In Scotland, section 22 of the *Criminal Justice (Scotland) Act 2003* introduced the specific offence of trafficking a person for the purpose of prostitution with a maximum penalty on conviction on indictment of 14 years’ imprisonment. Following a motion debated by the Scottish Government on 12 February 2004,¹⁵⁴ the offence of trafficking people for other purposes (Section 4 and 5 of the *Asylum and Immigration (Treatment of Claimants) Act 2004*) applies in Scotland as well as other parts of the UK. It came into force on 1 December 2004. This legislation was amended by section 35 of the *Criminal Justice and Licensing (Scotland) Bill* in March 2009, extending the scope of current offence provisions so that they refer to facilitating the “entry into” as well as the “arrival in” the UK.¹⁵⁵

Scotland has adopted several pieces of legislation relating to prostitution which are different to those in force in other parts of the UK. *The Prostitution (Public Places) (Scotland) Act 2007* made it an offence to solicit, in a public place, the services of “a person engaged in prostitution”.¹⁵⁶ By the end of March 2008 a total of 18 people were reported to have been convicted under this Act, significantly fewer convictions than under other, pre-existing legislation punishing soliciting.¹⁵⁷

Section 4 of the *Sexual Offences (Scotland) Act 2009* contains a new offence of “sexual coercion”, specifying that is unlawful to cause another person to participate in sexual activity if that person has not consented and without any reasonable belief that the person was consenting. The implication is that traffickers could be prosecuted with this offence; section 13 of the same law specifies “circumstances in which conduct takes place without free agreement”, including the use or threat of violence or the unlawful detention of the person concerned.¹⁵⁸ Once again, it is too early for charges to have been brought under this law, which is not scheduled to come into force until October 2010.

b) Legislation to tackle slavery, forced labour and debt bondage

Following the new legislation against trafficking adopted in 2002 and again in 2004, the UK adopted several laws to curb offences linked to forced labour. The first new measures were intended to regulate the activities of labour providers, known as ‘gangmasters’, and employment agencies, though only those involved in some parts of the economy.

Measures to tackle the exploitation of temporary workers in the UK agricultural industry were already under discussion in the UK’s Parliament when, in February 2004, the country was shocked by the deaths of 23 Chinese migrant workers (described as ‘cockle pickers’). The new measures were intended in particular to address concerns that existing controls on labour providers, known as ‘gangmasters’, were ineffective. *The Gangmasters (Licensing) Act*, adopted in July 2004, created a compulsory licensing system for gangmasters and other employment agencies supplying workers for agricultural activities,

¹⁵² Subsection (d) was substituted by the *Borders, Citizenship and Immigration Act 2009*, section 54, with effect from 10 November 2009, accessed on 12 April 2010 at www.opsi.gov.uk/acts/acts2009/ukpga_20090011_en_7. The subsection as originally enacted read:

(d) he is requested or induced to undertake any activity, having been chosen as the subject of the request or inducement on the grounds that-

- (i) he is mentally or physically ill or disabled, he is young or he has a family relationship with a person, and
- (ii) a person without the illness, disability, youth or family relationship would be likely to refuse the request or resist the inducement.”

¹⁵³ *Ibid.*

¹⁵⁴ Known as a Sewel Motion – a procedure allowing the Scottish Ministers to propose the adoption of legislation already adopted by Parliament in Westminster on issues for which the Scottish Parliament has devolved authority.

¹⁵⁵ From www.scotland.gov.uk/Topics/Justice/crimes/humantraffick/enforcement1, accessed on 7 April 2010

¹⁵⁶ www.opsi.gov.uk/legislation/scotland/acts2007/pdf/asp_20070011_en.pdf The Act came into force in October 2007.

¹⁵⁷ Written Parliamentary Answer by Kenny MacAskill MSP on 8 December 2009 (data for April 2008 to March 2009 was not yet available), accessed on 3 March 2010 at www.parlamaid-alba.org/business/pqa/wa-09/wa1208.htm

¹⁵⁸ www.oqps.gov.uk/legislation/acts/acts2009/asp_20090009_en_2#pt1-pb3-11q4, accessed on 3 March 2010.

gathering shellfish and related processing and packaging activities. Although the initial intention of this Act was to curb the exploitative activities of agricultural gangmasters, it applies generally to employment agencies operating in the agricultural and shellfish sectors, and to companies, unincorporated associations and partnerships. The *Employment Agencies Act 1973* already made it illegal for agencies to charge workers for finding them employment.

In practice, subcontracted workers recruited by labour providers ('gangmasters') were found not only in the sectors of the economy governed by the *Gangmasters (Licensing) Act 2004*. The abuse of workers from other EU or European Economic Area (EEA)¹⁵⁹ states and other parts of the world has been reported in other sectors of economic activity, notably domestic workers and social care workers.¹⁶⁰

The *Gangmasters (Licensing) Act 2004* lists the range of subcontracting arrangements to which a new licensing regime applies; makes it an offence to operate as a gangmaster without a licence, to possess a false licence, or to obstruct enforcement officers. It makes all the offences arrestable and enables the assets of convicted gangmasters to be seized. The system is supervised by the Gangmasters Licensing Authority (GLA), which was created in April 2005¹⁶¹ and began operating in April 2006. In October 2006 it became an offence to supply agency workers to agriculture, horticulture and food packing/processing operations without a GLA licence. In December 2006 it became an offence for labour users to use unlicensed labour providers. In April 2007 it became an offence to supply and use agency workers in the shellfish sector without a licence.¹⁶² The GLA has the power to revoke licences. Section 12 of the Act (*Offences: acting as a gangmaster, being in possession of false documents etc*) allows for the prosecution of unlicensed gangmasters and Section 13 (*Offences: entering into arrangements with gangmasters*) for the prosecution of farmers or others who use workers supplied by an unlicensed gangmaster.¹⁶³

In 2009 new legislation, Section 71 of the *Coroners and Justice Act 2009*, dealing with slavery, servitude and forced or compulsory labour, made it a specific criminal offence in England, Wales and Northern Ireland to hold a person in slavery or servitude or to require a person to perform forced or compulsory labour. The maximum sentence is 14 years. The Act entered into force on 6 April 2010.¹⁶⁴

New legislation relating to prostitution has been adopted on the grounds that it meets the UK's commitment under Article 19 of the Convention on "Criminalization of the use of services of a victim". Section 14 of the *Policing and Crime Act 2009* makes it an offence in England, Wales and Northern Ireland to pay "for sexual services of a prostitute subjected to force". The offence is committed "if someone pays or promises payment for the sexual services of a prostitute who has been subject to exploitative conduct of a kind likely to induce or encourage the provision of sexual services for which the payer has made or promised payment".¹⁶⁵ The term "exploitative conduct" is defined to include the use of "force, threats (whether or not relating to violence) or any other form of coercion" or the practice of any form of deception. The same Act amended laws on soliciting in England, Wales and Northern Ireland, making it an offence for a person in a street or public place, including a person in a vehicle who is 'kerb-crawling', to solicit someone for the purpose of obtaining that person's sexual services as a prostitute. The Act also gives the courts the authority to close establishments, for up to six months, where activities related to certain sexual offences involving prostitution or pornography are believed to have been committed, such as brothels.

c) Convictions resulting from new laws

In October 2009 the Home Office and Scottish Government reported that, since the adoption in 2003 of

¹⁵⁹ The EEA includes the 27 EU States and also Iceland, Lichtenstein and Norway.

¹⁶⁰ See, for example, Oxfam Briefing Paper, *Who Cares? How best to protect UK care workers employed through agencies and gangmasters from exploitation*, Kalayaan and Oxfam, 2 December 2009.

¹⁶¹ Temporary Labour Working Group, *A licence to operate. New measures to tackle exploitation of temporary workers in the UK agricultural industry*, London, November 2004.

¹⁶² Balch, A., Brindley, P., Geddes, A., and Scott, S., *Annual Review 2008, Executive Summary*, Gangmasters Licensing Authority, Nottingham, February 2009.

¹⁶³ *Gangmasters (Licensing) Act 2004*, accessed on 29 April 2010 at www.opsi.gov.uk/acts/acts2004/ukpga_20040011_en_1

¹⁶⁴ 'New anti-slavery laws introduced', Ministry of Justice, 26 March 2010, accessed at www.justice.gov.uk/news/newsrelease250310c.htm on 30 March 2010. The references to slavery, servitude and forced or compulsory labour are all to be interpreted in accordance with Article 4 of the Council of Europe's *Convention for the Protection of Human Rights and Fundamental Freedoms* (1950).

¹⁶⁵ Explanatory Note to Section 14 of the *Policing and Crime Act 2009*, accessed on 3 March 2010 at www.opsi.gov.uk/acts/acts-2009/ukpga_20090026_en_4#pt2-pb5-11g27

the first new laws against human trafficking, there had been 113 convictions for trafficking for sexual exploitation, seven for trafficking for forced labour and three for conspiracy to engage in trafficking. None of these convictions were secured in Scotland and the one trafficking conviction in Northern Ireland was subsequently overturned. Up to April 2010, there were reported to have been nine convictions under the *Gangmasters (Licensing) Act 2004* (six in England and three in Scotland).¹⁶⁶

Details about criminal proceedings involving suspected traffickers were difficult to obtain. The UKHTC published information about defendants and victims from 2008 up until June 2009, but the breakdown and the presentation of the information is not consistent. The Monitoring Group requested information from the Crown Prosecution Service and made *Freedom of Information* requests in order to gain more information on the level prosecutions and the charges and offences used to bring traffickers to justice in England and Wales and contacted relevant agencies in Scotland and Northern Ireland. The Group learnt that the Crown Prosecution Service can only provide information about convictions under trafficking legislation but do not have an information recording system to allow it to provide information on all charges and offences used to bring traffickers to justice. However, the Crown Prosecution Service informed the Monitoring Group that in conjunction with UKHTC they will be developing a more comprehensive recording system during 2010.

The difficulties in obtaining details of proceedings may have been in part because the focus of the Monitoring Group was on cases involving trafficked persons identified after 1 April 2009: few of these cases had come to trial by April 2010. However, our research revealed several other reasons, such as: the inherent difficulties of proving charges specifically related to human trafficking, which meant that some trials of suspected traffickers were not brought as trafficking cases and the lack of a system to track trafficking cases that resulted in prosecutions for other offences.¹⁶⁷

This poses a question about how well the UK is equipped to comply with the requirements of the Convention on prosecution of traffickers.

d) Relevant immigration law

With the entry into force of the Convention, various parts of existing immigration law began to be applied and used to implement Articles 13 and 14 of the Convention (relating to the reflection period and residence permit).

In general, those who are not British citizens, persons with the right of abode in the UK or persons exercising rights of free movement under EU law must have permission (referred to in the UK as 'leave') to enter and remain in the UK. Most need a visa prior to coming to the UK, although nationals of certain countries may come for short visits without a visa. Leave is given for specific purposes and subject to conditions. If these are breached, and in certain other circumstances, leave may be curtailed. A person who needs leave to enter or remain and does not have such current leave may be subject to an administrative removal. Persons whose presence in the UK is not considered 'conducive to the public good' may be deported from the UK. Those who are in the UK and have made an application for leave, meaning that they cannot be removed unless and until the application is determined against them (such as people seeking asylum or resisting removal on the grounds that it would breach their human rights), may be detained or given temporary admission until a decision is made on their application and any appeal.

In June 2009 the Home Office amended the regulations governing the residency rights of nationals from the EU and European Economic Area (EEA). In order to be entitled to reside in the UK, a migrant from the EEA has to be working, self-employed, self-sufficient or a student, or the family member of such a person. Those who cannot show they are working or self-sufficient are not entitled to benefits (social assistance) and run the risk of being removed or deported, even if they are believed to have been trafficked or are known to be victims of crime. For A2 and A8 nationals there are further restrictions on their access to the labour market, and they gain full EEA status and equal entitlement to social assistance after twelve months of continuous employment as a registered worker.

¹⁶⁶ Gangmasters Licensing Authority, *Wisbech Gangmaster Convicted* (press release), 28 April 2010.

¹⁶⁷ Interview 92 conducted 28 January 2010 with statutory agency.

e) Structures and responsibility

Overall responsibility for government policy related to human trafficking in the UK lies with the Home Office and the Home Secretary.

The UK Government has an Inter-Departmental Ministerial Group on Human Trafficking. This consists of 14 government departments which have a particular interest in the issue of human trafficking. According to one Minister who attends, the Solicitor General; the Group “works to ensure progress in the UK response [to human trafficking] is monitored and maintained”.¹⁶⁸

In 2006, the Government set up the United Kingdom Human Trafficking Centre (UKHTC), based in Sheffield, South Yorkshire. This was intended to become “the central point of development of law enforcement expertise and operational coordination”.¹⁶⁹ It describes itself as “a multi-agency centre that provides a central point for the development of expertise and cooperation in relation to the trafficking of human beings”¹⁷⁰ but does not have authority over anti-trafficking operations, which, within the police, are the responsibility of individual police forces. Since April 2010 the UKHTC has been part of the Serious Organised Crime Agency (SOCA), which is responsible to the Home Secretary, but SOCA does not report to the UK Parliament and is exempt from the *Freedom of Information Act*. Prior to April 2010, the legal status of the UKHTC was less clear and it was accountable to the police authorities in South Yorkshire, the area where it was based. In a letter sent out on 1 April 2010 to stakeholders, SOCA Deputy Director Mark Phillips gave an assurance that, despite this change, UKHTC would continue doing “business as usual”, with the only change foreseen in the near future being that UKHTC staff would eventually be based in Birmingham, rather than Sheffield. At the time this report was prepared, it was too early to assess what impact this change in accountability would bring.

At the same time the UKHTC was set up, the Government also established the Child Exploitation and Online Protection Centre (CEOP), a London-based police unit focusing on internet child abuse, which also has responsibilities for gathering intelligence about child trafficking.

In Scotland, responsibility for responses to human trafficking lies with the Scottish Government’s Criminal Justice Directorate and the Scottish Cabinet Secretary for Justice (an elected member of Scotland’s Parliament).

The situation is more complicated in Wales and Northern Ireland due to devolution. Although in Wales, as in England, overall responsibility on trafficking issues lie with the Home Office, the Welsh Assembly Government have certain responsibilities over victim protection and support. In Northern Ireland, responsibility for issues on human trafficking still lay with the Northern Ireland Office (NIO), specifically the Minister of State responsible for Northern Ireland (an elected member of the UK’s Parliament, rather than of Northern Ireland’s own Assembly), but with the devolution of crime and justice from April 2010, this became the responsibility of Northern Ireland’s Department of Justice.

g) Responsibility for possible cases of child trafficking

The UK Government has clearly stated that it views child trafficking as a form of child abuse and that a child’s need for protection takes priority over any questions concerning his or her immigration status.

When it comes to making decisions on child protection issues (such as those concerning trafficked children), responsibility is decentralised. Responsibility for child protection lies at local level throughout the UK with the children’s services run by local authorities. In England and Wales the local authority committees which agree how relevant organisations in each local area will cooperate to safeguard children are called ‘Local Safeguarding Children Boards’ while in Northern Ireland and Scotland they are ‘Child Protection Committees’. These are multi-agency (also known as ‘multi-disciplinary’) committees set up to ensure that all local statutory services which have an interest in safeguarding and promoting the welfare of children are represented.

¹⁶⁸ Vera Baird QC MP, Solicitor General, 4 March 2009, at Stopping Traffick ‘09 Conference, accessed on 1 March 2010 at www.attorneygeneral.gov.uk/NewsCentre/Speeches/Pages/StoppingTraffick%E2%80%9909Conference.aspx

¹⁶⁹ UK Action Plan on Tackling Human Trafficking, March 2007, page 9.

¹⁷⁰ www.ukhtc.org accessed 21 January 2010

Statutory agencies which detect cases in which any child might require protection are required to refer the case to the children's services unit of the local authority where they are located. The Children Acts of 1989 and 2004 established the child-safeguarding framework in the UK, which should ensure *all* children in the UK receive care and protection regardless of whether they are UK citizens or not. This legislation is supplemented by a range of guidance, such as *Safeguarding children who may have been trafficked* (December 2007) (England, Wales, Scotland versions) and *Working Together to Safeguard Children* (2010). Other relevant guidance includes *Safeguarding children and young people from sexual exploitation*, missing children and private fostering.

Section 11 of the *Children Act* 2004 places a statutory duty on key people and bodies to make arrangements to safeguard and promote the welfare of children. Importantly, Since November 2009 a new duty designed to be equivalent to that in section 11 of the *Children Act* 2004 applies to the UKBA; Section 55 of the *Borders, Citizenship and Immigration Act* 2009 came into force on 2 November 2009. It requires the UKBA to make arrangements to safeguard and promote the welfare of children in discharging its immigration, nationality and general customs functions. For the first time this explicitly required UKBA personnel to make the best interests of the child a primary consideration in decisions affecting children, as required by Article 3.1 of the *UN Convention on the Rights of the Child*.¹⁷¹

The principles underlying this system are that a child's protection needs are given absolute priority over other needs (such as investigating a possible crime) and that these needs are investigated and protection measures initiated at local level. The result of these principles is that whenever a child is considered to be at risk of "significant harm", the child should be placed in a protected environment and provided with safe accommodation.

Scotland and Wales have individual Ministers with specific responsibility for children and young people, and the Minister for Children and Early Years and the Minister for Education and Lifelong Learning in Scotland and the Minister for Children, Education and Lifelong Learning in Wales. In Northern Ireland, the Junior Ministers in the Office of the First Minister and Deputy First Minister fulfil a co-ordinating role in respect to cross-cutting policy issues relating to children and young people.¹⁷² In England and for UK-wide matters, this responsibility is held by the Minister for Children, Young People and Families in the Department for Children, Schools and Families (DCSF), now the Department for Education.

¹⁷¹ "In accordance with the UN the best interests of the child will be a primary consideration (although not necessarily the only consideration) when making decisions affecting children". UKBA and DCSF, *Every Child Matters. Change for Children, Statutory guidance to the UKBA on making arrangements to safeguard and promote the welfare of children*, Office of the Children's Champion, November 2009, page 15, (2.7).

¹⁷² www.unicef.org.uk/aboutus/uncrcukrpt.pdf accessed 15 January 2010.

Appendix 3: The referrals process

a) Referrals of adults

The core of the process is the completion of a form that is then passed onto a Competent Authority to take a decision and certify whether a person is a presumed trafficked person (in the first instance) and subsequently whether a person is considered more definitely to have been trafficked.

Since 1 April 2009 First Responders have been required to fill in a standard form about any individual who is a presumed trafficked person. The form is sent to a Competent Authority. The staff member of the Competent Authority who takes the decision on an individual referral (known as the 'case owner') does not routinely meet the presumed trafficked person, but reviews the standard form and other documents submitted as supporting evidence.

Figure 1 is a Home Office flow diagram that intends to summarise how the cases of individuals who may have been trafficked are expected to be referred by frontline agencies and First Responders.

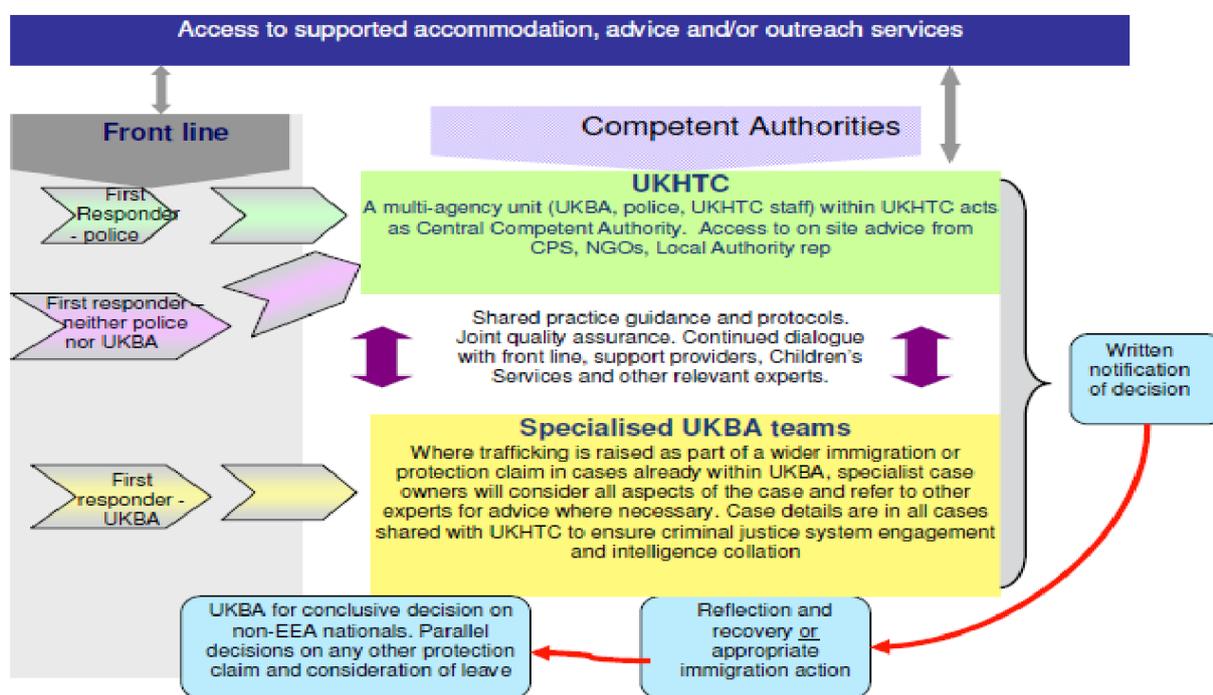


Figure 3. Diagram representing the UK National Referral Mechanism¹⁷³

Adults being referred in to the system must give their informed consent in the form of a signature to their details being passed on to the Competent Authority. Consent is not required in the case of children.

The forms for both adults and children list a series of 'indicators' or signs that suggest a person was trafficked. The First Responder is required to tick the boxes which are relevant. In the case of adults, there are four sets of indicators: 18 "general indicators", such as "Expression of fear or anxiety"; nine indicators concerning forced labour; eight concerning domestic servitude; and 11 concerning sexual exploitation.¹⁷⁴ Two pages of the seven-page form are available for First Responders to summarise evidence that supports a referral.

The process of elaborating indicators which can help identify trafficked adults or children is an ongoing one. Shortly before these forms were adopted, the European Commission and the International Labour

¹⁷³ Home Office, *Overview of the implementation of the National Referral Model*, www.crimereduction.homeoffice.gov.uk/humantrafficking005overview.pdf, accessed 6 January 2010, page 2.

¹⁷⁴ National Referral Mechanism for Potential (Adult) Victims of Trafficking. Report To Competent Authority for Decision, accessed on 7 January 2010 at www.crimereduction.homeoffice.gov.uk/humantrafficking005referralformadult-090409.doc

Organization (ILO) jointly published a set of *Operational Indicators of Trafficking in Human Beings*.¹⁷⁵ If and when the indicators mentioned on NRM referral forms are revised by the UK authorities, it would be appropriate to consider whether any of those mentioned by the ILO should be added.

b) The referrals process for children

Anyone can refer a suspected case of child abuse to their local authority children's services (part of the social services run by each Local Government Authority). However, the NRM envisages only public bodies such as a local authority, the UKBA or the police acting as First Responders in suspected cases of child trafficking. First Responders are required to fill in a standard referral form about any child who is a presumed trafficked child and this is to be submitted to the UKHTC or the UKBA. However, all cases of children should also be referred to the local authority where the child is located, to consider what measures, if any, are necessary to protect (or 'safeguard', the term used in England and Wales) the child concerned.

The referral form used to identify presumed trafficked children mentions a total of 58 possible indicators that a child may have been trafficked¹⁷⁶ and also contains two pages for the presentation of supporting evidence.

c) Competent Authority decisions and the decision-making timetable

"[With the NRM] victims need to disclose very early on, right at the very beginning, even before they are granted the 45-day reflection period. The NRM asks a lot from a person, disclosure becomes critical to the police, to UKBA and it can have a bad effect on the victim, especially when the person is asked to disclose even before all pieces are on the table and before the person can make an informed decision".¹⁷⁷

The published flow diagrams describing the NRM's referral process summarise the timetable that is supposed to govern decisions and subsequent action:

- First Responders are supposed to refer presumed trafficked persons to a Competent Authority within 48 hours of initial contact;
- a 'reasonable grounds' decision is supposed to be reached within five days of the Competent Authority receiving a referral form. The presumed trafficked person is supposed to receive a letter notifying them of the decision. If this decision is positive then:
 - the presumed trafficked person is granted 45 days to recover and consider whether to cooperate with a criminal investigation. This is in the same period in which an application may be lodged for a residence permit (to stay in the UK beyond the 45-day period) and/or extension of the reflection period. If the presumed trafficked person had been detained, they should normally be freed at this point;
 - in cases involving children, the 45-day reflection period is supposed to involve a "two-way information flow" between the Competent Authority and the local authority children's services responsible for the child;
- after a maximum of 45 days from the date of a positive 'reasonable grounds' decision, the Competent Authority is supposed to reach a definitive conclusive decision. If this is positive, a trafficked person who is not entitled to remain in the UK may be granted a temporary residence permit.¹⁷⁸ Permits may be issued either because the individual is involved in an ongoing criminal investigation or prosecution (in which case it is up to the police or Crown Prosecution Service to apply for the permit) or due to their personal circumstances (i.e. they are granted 'discretionary leave to remain');
- after the conclusive decision is made: any immigration procedures continue and may result in grants of leave to remain in the UK under general provisions of UK immigration and asylum law; a one-year (renewable) residence permit may be considered; or children are assisted to return to their home country if they both want to and it is deemed to be in their best interests; or adults may have the option of unassisted or assisted voluntary return.

¹⁷⁵ Issued in March 2009 and revised in September 2009. Accessed on 10 February 2010 at www.ilo.org/wcmsp5/groups/public/-ed_norm/---declaration/documents/publication/wcms_105023.pdf

¹⁷⁶ *National Referral Mechanism for Child Victims of Trafficking. Report To Competent Authority for Decision*, accessed on 7 January 2010 at www.crimereduction.homeoffice.gov.uk/humantrafficking005referralformchild-090713.pdf

¹⁷⁷ Comment from a legal representative present in the focus group organised in Northern Ireland on 9 November 2009

¹⁷⁸ Persons may not be entitled to remain in the UK due to their nationality, immigration status or because of a pending application under other provisions of immigration and asylum law

d) Criteria for reaching ‘reasonable grounds’ and conclusive decisions

According to the on-line *Trafficking Toolkit* issued by the Criminal Justice System in October 2009, the threshold for reaching a ‘reasonable grounds’ decision is a low one, “The test that should be applied is whether the statement ‘I suspect but cannot prove’ would be true and whether a reasonable person would be of the opinion that, having regard to the information in the mind of the decision maker, there were reasonable grounds to suspect the individual concerned had been trafficked”.¹⁷⁹ The guidance acknowledges that there may not be sufficient evidence at this stage, as First Responders may not be able to acquire enough information from the presumed trafficked person before submitting a referral.

The Toolkit explains how the decision maker should proceed to assess the credibility of the facts presented.

Although it is recognised that presumed trafficked persons may have difficulties in recollecting information and that this may result in contradictory statements (“as a result of trauma, victims in some cases might not be able to recall concrete dates, facts and in some cases their initial account might contradict their later statement”¹⁸⁰), the decision maker is nevertheless encouraged to assess the coherence and consistency of the facts submitted: “However, 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”.¹⁸¹

In the cases of children, decision makers are asked to determine whether their particular circumstances are a reasonable explanation for discrepancies and/or gaps in the evidence presented.¹⁸²

The conclusive decision involves the decision maker considering whether “on the balance of probability there is sufficient information to conclude the individual is a victim of trafficking”.¹⁸³ This means that “an offence under the definition of trafficking...will be established if it is more likely than not to have happened”.¹⁸⁴

No opportunity is available for the individuals who are the subject of negative decisions at either ‘reasonable grounds’ or conclusive decisions stages to appeal against or call for a formal independent administrative review of decisions which do not recognise that they have been trafficked. In certain circumstances it may be possible to challenge a decision by way of Judicial Review.

¹⁷⁹ Criminal Justice System, ‘Specific arrangements and advice for Competent Authorities’, *Trafficking Toolkit*, London, 2009, page 41.

¹⁸⁰ *Ibid.*, page 42.

¹⁸¹ *Ibid.*

¹⁸² *Ibid.*

¹⁸³ UKBA, *Victims of Trafficking*, 2009, page 49, accessed on 26 March 2010 at www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/victimsoftrafficking.pdf?view=Binary

¹⁸⁴ *Ibid.*

Appendix 4: Challenges to the correct identification of trafficked children

Various obstacles were reported to the Monitoring Group to foreign children in the UK being identified as trafficked or being given the protection that any presumed trafficked person requires. Two specific obstacles which require an urgent remedy involve inaccurate estimations of a person's age (wrongly assuming a child is an adult) and an assumption that a young trafficked person was a criminal rather than a victim of crime. A third issue has arisen when trying to check whether adults claiming to be the parents of some migrant children are indeed their parents, and that even if they are the parents that they may actually be involved in the trafficking of their own children.

Age assessment

The assessment of the age of separated children arriving in the UK is a controversial issue, with methods used by some professionals disputed by others and examples of cases in which subsequent litigation has demonstrated that staff in the UKBA and other statutory agencies do not give young people the benefit of the doubt, as they are required to in disputed cases. The Convention requires that, "[w]hen the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age" (Article 10.3). In cases reported to the Monitoring Group, this presumption and benefit of the doubt was not routinely applied.

The principles to be observed in assessing the age of young people who may be separated children are set out by the monitoring body established by the UN *Convention on the Rights of the Child*, the *Committee on the Rights of the Child*, in a General Comment on the *Treatment of unaccompanied and separated children outside their country of origin*.¹⁸⁵

The Committee on the Rights of the Child on the issue of identification and age assessment

"Such identification measures include age assessment and should not only take into account the physical appearance of the individual, but also his or her psychological maturity. Moreover, the assessment must be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect to human dignity; and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, she or he should be treated as such".¹⁸⁶

Children who may have been trafficked are frequently found without identification documents, and/or with false documents and additionally may have been instructed by their traffickers to lie about their age (as well as other matters), to appear either older or younger than their actual age. This situation is exacerbated when traffickers have provided children with forged passports or other identity documents that state they are adults, when in fact they are still children. The decision to dispute age is often based on ill-informed assumptions about the appearance, behaviour and roles of children in other cultures and contexts.¹⁸⁷

There is no statutory guidance on procedures for assessing age or the assessment process itself and there are considerable variations in the quality of the assessment process. The situation is further complicated by the practical reality that, if the assessment does conclude the child is a child, this has significant resource implications for the local authority, meaning that, in some circumstances, there may be pressures put on practitioners not to identify children as such.

Further controversy exists over the question of whether the UKBA should be provided with details of the methods used by other agencies to estimate the age of a particular young person who is subsequently referred to UKBA, in order to help its officials reach decisions about a young person's case. In some

¹⁸⁵ Committee on the Rights of the Child, *Treatment of unaccompanied and separated children outside their country of origin*, General Comment No. 6, UN document CRC/GC/2005/6, 1 September 2005, accessed on 11 March 2010 at [www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CRC_GC.2005.6.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CRC_GC.2005.6.En?OpenDocument).

¹⁸⁶ *Ibid.*, paragraph 31.

¹⁸⁷ ILPA, *When is a child not a child? Asylum, age disputes and the process of age assessment*, May 2007.

cases in 2009 UKBA was reported to have requested that a child's age be formally assessed, even when the local authority caring for the child considered that the child's age was not in dispute. The UKBA has not explained the reasons for this practice, but the Monitoring Group is concerned that it is being used (improperly) as a method for obtaining extra information to enable UKBA to assess either a referral (of a presumed trafficked child) or an asylum request.

It is relatively common for the age of people under 18 to be incorrectly estimated and for the police, UKBA, or other agencies to assume that they are older (i.e. adults). This is particularly the case for 16 and 17-year-olds, who have been considered 'beyond doubt' to be adults, when an element of doubt about their precise age should have been recognised.

When interviewing young people to assess if they were under 18 (in cases reported between April 2009 and the beginning of 2010), interviewers were reported to attach importance to a range of behavioural characteristics, such as the interviewee's demeanour, whether he or she seemed confident (interpreted as a sign that he or she was older than claimed) and whether he or she maintained eye contact with the interviewer. Over the longer term, age assessors were also reported to look out for physical changes (i.e. signs that a young person is still growing). In one case, that a young person's facial features remained unchanged over a period of six months was interpreted as a sign that they were older than claimed. Evidently, there is a danger that the lack of consistency in the methods used to assess the age of young people leads to mistrust and a lack of confidence in the assessments that are made.

Further, it is not only whether a separated young person is thought to have reached 18 or not that has an important impact on the way the child is treated, but the age attributed to them also has an impact on the level of care and support they receive. For example, children under 16 will often be accommodated in foster care, whereas children of 16 and 17 are more likely to be accommodated in semi-independent accommodation with far less supervision and support.

When an individual's stated age is disputed s/he should not be removed (including being transferred to another EU State under the provisions of the so-called Dublin II Regulation¹⁸⁸) until after the initial decision regarding her/his age and any subsequent appeal of this decision has been considered. Age assessment is not an exact science and a considerable margin of error is therefore required. The margin of error for each age assessment test should be considered and documented. The individual concerned should be given the benefit of the doubt in disputed cases.

Confirming the identity of those claiming to be children's parents

A series of specific issues have arisen in relation to Romanian children of Roma ethnic origin, who have been found engaging in unlawful behaviour such as pick pocketing and ATM theft. Children from the same community have also been seen begging for money in the streets.¹⁸⁹ The children concerned are of school age. Similar incidents have been reported in other EU countries, starting with Greece at the end of the 1990s, and both the police and child protection authorities have routinely found it difficult to find out if the adults accompanying them are actually their parents or are either unrelated or more distant relatives. In Greece, substantial evidence was found at the beginning of the last decade demonstrating that some, but not all, of the children had been trafficked.¹⁹⁰ Similar cases were investigated in Austria, Germany and Spain.

Since 2009, the Metropolitan Police Service's Operation Golf has been investigating the extent of Romanian Roma organised crime networks in the London area following the accession of Bulgaria and Romania to the EU in 2007. Operation Golf is a 14-person unit described by the UK authorities as the first successful European 'Joint Investigation Team', working closely with the Romanian National Police. The

¹⁸⁸ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

¹⁸⁹ Interview 2 on 15 September 2009 with law enforcement agency.

¹⁹⁰ Terre des Hommes and Ndihamë për Fëmijët, *Child Trafficking in South-Eastern Europe: the Development of Good Practices to protect Albanian Children*, Tirana, November 2004. In Greece a method was developed by NGOs at the beginning of the last decade which involved deploying social workers from the children's country of origin to talk to the children while they were working on the streets. While the children remained unwilling or unable to talk to the Greek police, they were willing to confide in the social workers, who could talk to them in their own language (Albanian), more often, making it possible to establish if the children had been trafficked or not.

unit led and advised on a series of operations in the UK in 2009 and 2010, in collaboration with other agencies.

Adults from the same community present themselves at the police station where a child is held, claiming to be a parent or relative. In some cases their identity document or that of the child is in such a poor state that the police are reportedly left wondering if the parental relationship is genuine.

Even when the relationship between parent and child has been established there is still a risk of trafficking, There has been at least one case established, as part of Operation Golf, of parents trafficking their own children.

Appendix 5: Review of UK practice on specific measures recommended in the Convention

a) Victim Assistance

The Convention is the first international treaty that places on States Parties the obligation to provide protection and assistance to those who have been trafficked. Organisations belonging to the Monitoring Group, as well as others in civil society, welcomed the signature and ratification of the Convention by the UK, as a step to bring an end to an *ad hoc* approach to protection and assistance. While in some areas, such as in Northern Ireland, improvements in cooperation and coordination were noted, many practitioners felt that the improvement they hoped for had not occurred. This chapter examines how the management of assistance has affected trafficked persons since the ratification of the Convention.

Standards set by the Convention

The Convention requires States to provide assistance to “victims in their physical, psychological and social recovery” (Article 12.1), including at least:

- a. “standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;
- b. access to emergency medical treatment;
- c. translation and interpretation services, when appropriate;
- d. counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;
- e. assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
- f. access to education for children”.

In addition to “emergency medical treatment”, “each Party shall provide necessary medical or other assistance to victims lawfully resident within its territory who do not have adequate resources and need such help” (Article 12.3).

Article 12.1.a of the Convention refers to “appropriate and secure accommodation”. The use of the word “secure” does not imply that those living there are not allowed out. Paragraph 154 of the *Explanatory Report* specifies that, “As a guarantee of victims’ security it is very important to take precautions such as keeping their address secret and having strict rules on visits from outsiders, since, to begin with, there is the danger that traffickers will try to regain control of the victim”. In this context, the Convention is concerned about the safety and security of those in the accommodation; in effect, the Convention requires the accommodation to be ‘secure’ and safe for those accommodated there.

The Convention also requires States to take action “to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness” (Article 12.6). It specifies that assistance can be provided in cooperation with NGOs and other relevant organisations (Article 12.5), while the *Explanatory Report* confirms that it is the State that remains responsible for meeting the obligations of the Convention and therefore up to its officials “to take the steps necessary to ensure that victims receive the assistance they are entitled to, in particular by making sure that reception, protection and assistance services are funded adequately and in time” (paragraph 149).

The UK has relevant obligations under various other international conventions. In the case of trafficked women, for example, the *Convention of the Elimination of All Forms of Discrimination Against Women* (CEDAW)¹⁹¹ obliges State Parties in Article 12(2) to “ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.” In General Recommendation No. 24, adopted in 1999, the Committee on the Elimination of Discrimination Against Women called on States Parties to “ensure, without prejudice and discrimination, the right to sexual health information, education and services for all women and girls, including those who have been trafficked, even if they are not legally resident in the country” (paragraph 18).¹⁹²

¹⁹¹ Adopted by the UN General Assembly in 1979 and ratified by the UK in April 1986.

¹⁹² CEDAW General Recommendation No. 24, accessed on 23 March 2010 at www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom23

In the case of trafficked children, the UK, along with all other States in Europe, has a legal obligation to enforce Article 39 of the UN *Convention on the Rights of the Child*: “States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child”.

Policy on assistance in the UK

“The POPPY Project is clearly a lifeline to victims in need of its specialist services and it is great to see that the additional investment will help more victims escape a life of exploitation, abuse and violence. Trafficking victims are often subjected to devastating crimes which have no place in modern society...I hope the expansion of support will lead to many more of these victims coming forward to seek support and justice.” (Claire Ward MP, Parliamentary Under Secretary of State in the Ministry of Justice, 18 June 2009, when visiting the POPPY Project in London. The Ministry of Justice reported that, “As part of the UK’s commitment towards implementing the Council of Europe Convention on Action against the Trafficking in Human Beings... £3.7m [million] was awarded by the Ministry of Justice and Home Office over two years”).¹⁹³

According to the *Trafficking Toolkit* issued at the end of 2009 by the Criminal Justice System, “Victims of trafficking can access safe accommodation, advocacy, living expenses, access to counselling, support through the criminal justice process, access to independent legal advice (where required), access to interpretative services, and help with resettlement through various service providers;

- Female victims of sexual exploitation and domestic servitude – POPPY project, TARA, Hibiscus, Salvation Army, Medaille Trust;
- Male victims of sexual exploitation and domestic servitude – Migrant Helpline, Kalayaan;
- Victims of forced labour – Migrant Helpline”.

“Victims of human trafficking can also benefit from the roll out of other initiatives like sexual assault referral centres and independent sexual violence advisors”.¹⁹⁴

Unfortunately the Toolkit is misleading in suggesting, for example, that Kalayaan can provide accommodation to victims of domestic servitude. It does not have the resources or mandate to do so. The NGO provides advice and support to adults trafficked into domestic servitude (male and female) and engages in advocacy on their behalf. It also fails to indicate on what basis and under what conditions the NGOs that were named can obtain government-financed assistance (rather than using their funds) to provide the services mentioned.

The same Toolkit points out that, to qualify for government-financed assistance, a trafficked person must be located physically in the UK and “still be experiencing the constituent elements of trafficking, as defined in the Convention, when they present themselves to a Competent Authority”.¹⁹⁵ This later requirement appears to have no basis in the Convention. Under the Convention the UK should guarantee assistance to any victim identified since the Convention was ratified.

With the exception of the presumed trafficked persons who have already applied for asylum, many of those who contact organisations that can provide assistance are not entitled to social assistance in the UK (e.g. they have no recourse to public funds as a result of their immigration status). Only a few NGOs have negotiated funding arrangements with government departments, which allow them to pay the costs of assistance before someone is the subject of a ‘reasonable grounds’ decision. If the timetable for reaching such a decision is respected – two or three days before submitting a referral and a further five days for a decision to be made – there is already a problem in paying for the first week of assistance, at the very time

¹⁹³ Ministry of Justice, *Increased support for victims of human trafficking*, 18 June 2009, www.justice.gov.uk/news/newsrelease-180609c.htm accessed on 4 March 2010.

¹⁹⁴ Criminal Justice System, *Trafficking toolkit. Tackling Trafficking*, London, 2009, page 34.

¹⁹⁵ Criminal Justice System, *Trafficking toolkit. Specific arrangements for voluntary organisations*, London, 2009, page 81.

when a trafficked person's needs may be most acute. In practice, with 'reasonable grounds' decisions routinely taking much longer, this problem period is often longer.¹⁹⁶

The eight organisations mentioned above do indeed all provide services to trafficked persons, as do some other NGOs.¹⁹⁷ However, not all of the eight receive funds from the State for the purpose of providing services to trafficked persons.

In October 2009 the *Update to the UK Action Plan* announced that an additional £4 million was to be made available over two years to provide "enhanced specialist victim care arrangements in England and Wales".¹⁹⁸ This was to include the appointment in the UKHTC of a National Coordinator for victims and support for labour trafficking victims. The Update indicated that the new coordinator would help set best practice standards. By early 2010, no-one at the UKHTC was known to be coordinating victim support and the absence of coordination was causing concern to many organisations providing assistance.

The UKHTC does not provide services to trafficked persons, nor in practice has it yet played a role in ensuring that victims receive the assistance they are entitled to. In response to a *Freedom of Information* request by a law centre, the UKHTC stated in March 2010 that, "UKHTC have no obligation of care towards applicants to the NRM. This is the responsibility of the First Responder to arrange, in conjunction with NGOs or Local Councils, and UKHTC can offer advice in these areas".¹⁹⁹

The UKHTC's assertion comes close to denying the State's responsibility for ensuring that presumed trafficked persons are provided with the assistance to which they are entitled under Article 12.1 of the Convention.²⁰⁰

The NRM does not function in the UK as a referral system and there is no National Victim Care Coordinator to ensure and monitor that all presumed trafficked persons can access their rights under Article 12 of the Convention. Members of the Monitoring Group have repeatedly tried to ascertain which body or department is responsible for overseeing and coordination regarding assistance. The responsible Government Ministers, as well as the Home Office, have been asked several times since November 2009 about responsibility for ensuring that each trafficked person who receives a positive NRM decision is provided access to the assistance and services to which they are entitled, and to clarify who is responsible for overseeing the process and knowing what is happening to these individuals.

At the time of writing (April 2010), there was still no clarity about who is responsible for coordinating and overseeing provision of assistance to (presumed) victims of trafficking. It appears that the responsibility of the authorities (at least for adults) ends with the delivery of the letter with the decision about reasonable or conclusive grounds.

What happens in practice: access to accommodation for adults

In England the main organisation providing accommodation for adult women who have been trafficked into prostitution or domestic servitude is the POPPY Project, with accommodation in Cardiff, London and Sheffield (with capacity for up to 54 bed spaces, although, until the end of March 2010, only five of these were available for women trafficked into domestic servitude). The main organisation providing accommodation to adult men and women who have been trafficked for other purposes, such as forced labour, is Migrant Helpline. These two NGOs both receive finance from the Ministry of Justice. In Northern Ireland, Women's Aid is responsible for providing accommodation to trafficked women. It can get financial compensation from the Northern Ireland Office for assisting women who receive a 'reasonable grounds' decision. In practice all the referrals to Women's Aid come from or have to be referred shortly afterwards

¹⁹⁶ Interview 44 on 10 November 2009 with NGO – service provider.

¹⁹⁷ For example, the Helen Bamber Foundation offers intensive and long term therapeutic support as well as health assessment and advocacy for survivors, whilst working for the health and protection of victims.

¹⁹⁸ Home Office and Scottish Government, *Update to the UK Action Plan on Tackling Human Trafficking*, October 2009, page 19.

¹⁹⁹ *Freedom of Information* request 20100161, "What are the parameters of obligation of UKHTC towards the support and care of presumed trafficked persons?", requested by Brent Law Centre.

²⁰⁰ The *Explanatory Report* (paragraph 148) comments that, "Paragraph 1 [of Article 12] provides that the measures concerned have to be taken by 'each Party'. This does not mean that all Parties to the Convention must provide assistance measures to each and every victim but that the Party in whose territory the victim is located must ensure that the assistance measures specified in sub-paragraphs a. to f. are provided to him or her."

to the Police Service of Northern Ireland (PSNI). In Scotland, TARA provides accommodation to women trafficked for sexual purposes (principally to women located in the Glasgow area) and is financed by the Scottish Government and Glasgow City Council.

Other NGOs provide accommodation to smaller numbers of trafficked persons, but receive no funding from Government sources. However, some of these NGOs reported to the Monitoring Group in May 2010 that in the period April 2009 – April 2010 they had to close down a number of bed spaces they had available for trafficked persons due to lack of funding, even when they had been granted the status to act as a First Responder.²⁰¹

In October 2009, the *Update to the UK Plan* noted that, “The number of refuges for victims trafficked into sexual exploitation and domestic servitude has increased, with permanent refuges in London, Sheffield and Cardiff (a total of 54 places provided on a rolling basis)”. It reported that, between starting in 2003 and August 2009, the POPPY Project had provided “acute accommodation” to 239 people.²⁰²

In addition to providing safe accommodation and financial support to some of its clients, the POPPY Project also provides access to counselling and medical care, education, and access to advice on legal and immigration issues. It can only provide accommodation to women who are the subject of a referral to the NRM, while other forms of assistance are given on an outreach basis to women who have not wanted to be referred. In theory the POPPY Project has a support model for trafficked women that is intended to last for between four and six months, but many need to stay for longer, underlining the severity of their mental health symptoms and the long time necessary for the woman concerned to remain in secure, safe accommodation to treat these symptoms successfully.

Similarly, in Glasgow, TARA provides women with emergency medical care, out of hours support and access to legal advice.

In January 2010, in response to a *Freedom of Information* request, the UKHTC provided details about the organisations that had provided accommodation to people who had been referred, as presumed trafficked persons, to the NRM. It reported that, out of a total of 549 people, 129 of those waiting for an initial ‘reasonable grounds’ decision (i.e. prior to starting a reflection period) had been in accommodation intended for asylum seekers.²⁰³ At a later stage, once a ‘reasonable grounds’ decision was made, out of the 549 people referred:

- 114 lived in accommodation intended for asylum seekers
- 51 lived with friends or relatives
- 32 were accommodated by the POPPY project
- 37 were accommodated by Migrant Helpline
- 30 were described as being in private accommodation
- 61 were housed by local authorities (ie presumably all children)
- 25 others were housed in a refuge or by another NGO
- five were housed by an employer

A further 39 were reported to be in detention, ten were said to have left the UK, 28 to have absconded or gone missing, accommodation for 18 was said to be unknown and no record was available to indicate where 99 had been accommodated.²⁰⁴

The procedures of the NRM have been an impediment to getting accommodation provided to some presumed trafficked persons. For example, because of the way they perceive the NRM to be functioning, support organisations sometimes delay referring a case to a Competent Authority, so that the person they regard as a trafficked person can receive legal advice first. During such time, either the trafficked person herself/himself or the support organisation has to find accommodation.

²⁰¹ Communication via email with NGO – service provider on 7 May 2010.

²⁰² *Update to the UK Action Plan on Tackling Human Trafficking*, October 2009, page 22, accessed on 6 January 2010 at www.crimereduction.homeoffice.gov.uk/humantrafficking004f.pdf

²⁰³ This is described as NASS accommodation after the National Asylum Support Service, which no longer exists.

²⁰⁴ *Freedom of Information* request 20100021 by ILPA, inquiring about the number of adults who were in detention and/or prison at the time of referral continued to be during the 45 day reflection period, answered 21 January 2010.

In one case, when a presumed trafficked person was unable to get access to the accommodation run by the POPPY Project in London (no bed was available), she stayed with an acquaintance. In such circumstances she was ineligible for any financial assistance, as she was not residing in government-funded accommodation. When an application for accommodation was lodged with the UKHTC, she was told it was only available in northern England, where she would have been isolated from her lawyers and the organisation providing support. The problems in this case were only solved once an MP agreed to step in and request another support organisation to house the person.²⁰⁵

Some trafficked persons who have claimed asylum have been placed in the same accommodation as other asylum seekers (sometimes referred to as 'NASS accommodation'). This can rarely be categorised as 'safe'. Some trafficked persons in such accommodation have reported not feeling secure and being concerned about encountering the people who trafficked them. Such accommodation has a particular disadvantage for women who have experienced sexual exploitation, when the accommodation is not exclusively for women. However, even if it is, problems remain. One woman living in all-women housing expressed concern at encountering the boyfriends of other women residents and at the behaviour of the man who was the manager of the property.²⁰⁶ Other women who had been trafficked commented that they were frightened by the lack of a receptionist or anyone else to scrutinise visitors.

Many women who have been identified as trafficked were either in their latest stages of pregnancies or had babies or young children. The POPPY Project is the only organisation that has special accommodation for women with young children, but this is only available in London. Migrant Helpline can accommodate families and pregnant women. TARA in Glasgow cannot accommodate women who are pregnant or have children but can offer other support as the women concerned have usually been asylum seekers who were housed in NASS accommodation (which is not secure). Of the 22 women that TARA supported since April 2009, 11 had children and four were pregnant when they contacted the organisation.

Specific problems have arisen about paying for the costs of accommodation and other forms of subsistence (meals, transport, etc.) of a presumed trafficked person when they first contact a First Responder or support organisation. With several notable exceptions, support organisations are not entitled to reimbursement for such costs until and unless a presumed trafficked person receives a positive 'reasonable grounds' decision. This means that some support organisations incur significant costs for which they are not reimbursed, both when someone whom they suspect has been trafficked receives a negative decision and when a Competent Authority is slow in making a 'reasonable grounds' decision.

Some NGOs, such as the POPPY project and TARA, do have funding arrangements which cover the costs incurred from the time a presumed trafficked person first contacts them. Only a few others, such as Women's Aid in Northern Ireland, have been able to renegotiate funding arrangements to cover costs in this way.

Access to accommodation for children

Local authorities are responsible for arranging accommodation for certain children aged up to 18.²⁰⁷ Children aged 16 or 17 may be placed in less secure accommodation than those who are under 16. This

²⁰⁵ Case 157 submitted to the Monitoring Group in the period September 2009 – January 2010.

²⁰⁶ Interview 82 on 15 December 2009 with a legal representative.

²⁰⁷ Section 20 of the *Children Act 1989* on the *Provision of accommodation for children* (www.opsi.gov.uk/acts/acts1989/ukpga_19890041_en_4, accessed on 28 April 2010) specifies that,

"(1) Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of:

(a) there being no person who has parental responsibility for him;
(b) his being lost or having been abandoned...";

"(3) Every local authority shall provide accommodation for any child in need within their area who has reached the age of sixteen and whose welfare the authority consider is likely to be seriously prejudiced if they do not provide him with accommodation..."

"(5) A local authority may provide accommodation for any person who has reached the age of sixteen but is under twenty-one in any community home which takes children who have reached the age of sixteen if they consider that to do so would safeguard or promote his welfare.

(6) Before providing accommodation under this section, a local authority shall, so far as is reasonably practicable and consistent with the child's welfare—

(a) ascertain the child's wishes regarding the provision of accommodation; and
(b) give due consideration (having regard to his age and understanding) to such wishes of the child as they have been able to ascertain."

is sometimes temporary accommodation which leaves this group of children vulnerable to further exploitation.

What accommodation is available for trafficked children in practice

The lack of suitable accommodation and adequately trained supervisors or foster parents has been highlighted by the ongoing problem of children going missing from care (see 10.5 above).

Part of the challenge concerns the lack of relevant (specialist) knowledge about human trafficking at the level of local authorities. This has led some to categorise accommodation as 'safe' if the 16 or 17-year-olds sharing a house are visited by a social worker several times a week, when more intense supervision is almost certainly necessary.²⁰⁸

ECPAT UK is in close contact with some children who have been trafficked (or young adults who have been trafficked as children) and has heard what 'safe accommodation' means to them. Those who had good experiences gave positive feedback on foster carers who understood what trafficking involved and the children's specific needs, alongside providing safe and supported surroundings. Members of ECPAT UK's Youth Group have commented, "You need to be somewhere where they understand you and can keep you safe", and said how important it was to live with "Someone that understands what I have been through".²⁰⁹ Others, however, expressed distress at being placed in situations where they lived in fear of being found by their traffickers, feeling that their carers did not understand their situation and not listened to by the adults who were responsible for their safety. Another Youth Group member commented, "Safety has to be taken seriously, it's the main priority, there's no future if you're not safe".²¹⁰

Action needed to keep children safe

The UK authorities have a responsibility under the Convention to ensure that safe accommodation is provided by local authorities for all children who have been trafficked. Too many such children are provided with inappropriate accommodation which does not address the particular vulnerabilities of these children who, without safe and supported accommodation, remain at risk from going missing from care. Whenever there is a suspicion that a child has been trafficked, she or he should, wherever possible, be placed with foster carers. Foster care provides specialist, safe and supported care that recognises the specific needs of trafficked children and is adapted accordingly. It provides the best protection for trafficked children and reduces the risk of them going missing and being exposed to further harm. Importantly foster care provides children with a specific adult who is available to give them support.

It is important for social workers to be able to identify children who may have been trafficked and for the local authority to ensure they are placed in safe and secure accommodation, if necessary out of the area where they were exploited.

Foster carers who look after trafficked children should be trained to understand and provide for their specific needs. Those who are entrusted with the care of separated children who share a similar profile to children who have gone missing and are believed to have rejoined their trafficker require more training about suitable precautions to take. The Monitoring Group was told by social workers in contact with foster carers that some foster carers have adopted suitable arrangements on their own initiative, but for others the nature of the threat (of children apparently rejoining traffickers of their own volition) is difficult to understand.²¹¹

Assistance for trafficked persons from EU States

EU nationals can get access to assistance if they belong to one of the following categories: workers, self-employed, self-sufficient, students or if they retain rights of residence or are permanent residents or if someone else in their family is economically active in the UK. Those who have been trafficked into prostitution are not recognised by the UK authorities as having been 'economically active', as it is not possible to be employed (or self-employed) as a prostitute in the UK, while some of those subjected to

²⁰⁸ Interview 52 on 13 November 2009 with NGO – service provider.

²⁰⁹ Quotes from young people speaking on *In Our Shoes*, a DVD issued by ECPAT UK in 2009. *In Our Shoes* is a short film that describes young people's positive and negative experiences of foster care, including views about the relationships with their carers and social workers.

²¹⁰ *Ibid.*

²¹¹ Interview 35 on 3 November 2010 with NGO – service provider.

forced labour have no evidence, in the form of payslips or National Insurance contributions, to prove they were economically active.

EU nationals who are traumatised following a trafficking experience, or need other forms of counselling and cannot work, may consequently find they are not entitled to any general form of social assistance (unemployment pay, social housing etc.). So, unless they are given a residence permit, they may be left without assistance.

These difficulties are exacerbated for nationals of certain EU Member States due to the terms of their entry into the UK under the *Workers Registration Scheme* for A8 nationals and the *Accession Worker Scheme* for A2 nationals, where they need to be in employment for 12 months before being able to access certain benefits. Recent migrants from Bulgaria and Romania (referred to as 'A2 nationals'), have to be registered with the *Accession Worker Scheme* for at least 52 weeks before they can get access to benefits such as unemployment benefit and social housing.

Support organisations which provide support to trafficked persons from Bulgaria or Romania know that many such people are unlikely to get any social assistance in the UK once they leave the organisation's special accommodation. In order for such service providers to be able to move them out (and take in others whose need is greater), it would help if the UK authorities could consider that a one-year residence permit granted to A2 nationals could be interpreted as equivalent to their having been registered under the *Accession Worker Scheme*, so that they become entitled to mainstream social assistance.

What happens in practice: medical treatment

For those presumed trafficked persons who are not assisted by any of the NGOs in the UK that have been designated (officially) to support victims of trafficking, accessing medical treatment can be challenging. In some cases, NGO staff effectively act as their advocates – to persuade a particular doctor or surgery to treat a trafficked person, highlighting the fact that there is no functioning referral system, at least in the case of health care, for such individuals. Presumed trafficked persons who have received either positive 'reasonable grounds' or conclusive decisions and who are in need of medication have to pay prescription charges from their weekly allowance (including children aged 16 and 17). This is in contrast to individuals who seek asylum, who do not have to pay prescription charges.²¹²

Presumed trafficked persons who are dispersed following an asylum application (i.e. sent from the place where they have been identified to a different part of the UK) have no continuity in their care, especially in mental health support, which can be very disruptive and counterproductive to their long-term recovery.

There is also a lack of specialised mental health services. When presumed trafficked persons try to access those services available for asylum seekers, they generally find the services are already oversubscribed. Further, the counsellors who are available may not have the expertise to deal with the effects of trafficking *per se*. One woman who had been identified as trafficked and was taken to hospital due to her very serious mental health condition received a visit from the hospital debt collector to see if it was safe to discharge her. This person was unable to wash herself, speak or make any eye contact.²¹³

What happens in practice: interpreters

As with medical care, referral to the NRM does not guarantee a presumed trafficked person will have access to good quality interpreters. Individual agencies that are not government funded have to rely on their own resources in order to provide interpreters to presumed trafficked persons. The Monitoring Group was told that some counselling services in the UK have to raise funds privately to cover the costs of interpreting before they can offer their service to presumed trafficked victims,²¹⁴ while others rely on volunteers to interpret.

The need for better and more consistent access to interpreters throughout the NRM process was raised by NGOs with the UKHTC on a number of occasions in 2009, but no improvements were noted.

²¹² The National Health Service (General Medical Services Contracts) Regulations 2004, accessed on 12 May 2010 at www.opsi.gov.uk/si/si2004/20040291.htm#22

²¹³ Interview 88 on 14 January 2010 with NGO – service provider.

²¹⁴ Interview 25 on 27 October 2009 with NGO – service provider.

Presumed trafficked persons have little choice as to the interpreters they are allocated. Agencies supporting them often have to rely on telephone interpreting, especially if outside of London, which suits certain individuals, but not others.

An example of problems which occur as a result of poor interpretation, and which cause direct prejudice to the presumed trafficked person who is concerned, occurred when a support organisation that relies on volunteer interpreters was unable to find any who spoke the language of a woman that had contacted the organisation and who spoke no English. The support organisation was obliged to rely on the woman's uncle (who was accompanying her) to interpret for her. In the translation he provided, he indicated that the woman's husband was dead and that, although she no longer used her husband's family name, her passport contained this name. As a result of the mix-up in names, the UKHTC had been unable to locate records concerning the woman in the UKBA's records. However, it later turned out that her husband was not dead: the poor interpreting had resulted in miscommunication. Nevertheless, this contributed to the UKBA rejecting her referral to the NRM, on the basis that the information she provided was not credible.²¹⁵

b) Access to Legal Assistance

Standards set by the Convention

Two different articles in the Convention guarantee trafficked persons legal advice and legal assistance. As mentioned in the previous chapter, Article 12.1 requires assistance to include, at least,

12.1 d "counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;

12.1 e "assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders".

Article 15, dealing with compensation and legal redress focuses on "the right to legal assistance and to free legal aid for victims" (Article 15.2).²¹⁶ The *Explanatory Report* (paragraph 195) notes that "As court and administrative procedure is often very complex, legal assistance is necessary for victims to be able to claim their rights".

The counselling and information required under Article 12.1.d is considered crucial by the *Explanatory Report* (paragraph 160) promptly after someone is identified as a presumed trafficked person. "The information [required] deals with matters such as availability of protection and assistance arrangements, the various options open to the victim, the risks they run, the requirements for legalising their presence in the Party's territory, the various possible forms of legal redress, how the criminal-law system operates (including the consequences of an investigation or trial, the length of a trial, witnesses' duties, the possibilities of obtaining compensation from persons found guilty of offences or from other persons or entities, and the chances of a judgment's being properly enforced). The information and counselling should enable victims to evaluate their situation and make an informed choice from the various possibilities open to them."

UK Policy

Rules about access to legal aid in the UK are governed by the Legal Services Commission. Policy and practice in the UK about access to a legal representative depend very much on the circumstances in which an adult or child comes to the attention of the police or another First Responder. For example, some are picked up by the police and taken to a police station as possible offenders. People arrested for a criminal offence or facing questioning as a suspect in a criminal case are supposed to be told of their entitlement to a solicitor. However, those who have immigration problems may not be told they qualify for (or need) legal advice, in particular if there is no application pending before the authorities.

Once in a police station, a trafficked person who has not been identified and who is suspected of committing a crime can expect to get legal advice from a duty solicitor. However, the solicitor's expertise is in criminal law, not routinely in immigration law.

²¹⁵ Case 158 submitted to the Monitoring Group between September 2009 – January 2010.

²¹⁶ Article 15.2 states, "Each Party shall provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law".

In contrast to individuals who are suspected of an offence, the police and other law enforcement agencies are not likely to think of a lawyer for a presumed trafficked person who is a victim or witness and may not be aware that the victim/witness needs legal advice, for example on immigration matters. Similarly, social workers who are called in to accompany a child who is suspected of having been trafficked may not refer the case to a lawyer. In both these situations there is a danger that a presumed trafficked person is never told about their right to be advised by a legal representative and remains largely uninformed about the information that Article 12.1.d requires them to have.

The UKBA instructions to its own staff on handling possible trafficking cases do not refer to putting victims in touch with a lawyer (although the referral form submitted to a Competent Authority does ask if the individual concerned has had access to legal advice).²¹⁷ If a person is in the detained fast track they will have access to a lawyer there. Others may not.

What happens in practice

The Monitoring Group found that people who have been trafficked have experienced difficulties in getting free legal representation at all the stages through which their cases progress. NGOs providing support to victims noted throughout 2009 that it was difficult to find solicitors who had an understanding of the NRM and to find such solicitors with capacity to take cases. While this was not surprising, as the procedure was new, the NGOs concerned nevertheless felt it prejudiced the opportunities of their clients to securing recognition as a trafficked person.

The complication noted in 13.2 of duty solicitors not all being familiar with the issue of human trafficking meant that some did not realise their client had been trafficked even when their client disclosed this to them, or to the police in the course of an interview, information which is generally viewed as an indicator of trafficking. This has resulted in some cases in duty solicitors who specialise in criminal law advising clients who have been trafficked to plead guilty in court.²¹⁸

On several occasions defendants who are believed to have been trafficked have asked to change legal representatives, so that someone familiar with the issue of trafficking can represent them instead.

One legal representative explained to the Monitoring Group how much time had been required to prepare a request for the prosecution of a defendant who had been trafficked to be discontinued. He estimated that legal aid paid only a small portion of the costs borne by his legal practice.²¹⁹ His comment was that, as a matter of routine, it was unlikely that legal representatives could spend the time needed to contest cases which were often complicated.

c) Non-criminalisation

Standards set by the Convention

The Convention specifies that individuals who have been trafficked should not be punished for the illegality of their residence in a country or their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.

The Convention contains a “non-punishment provision” in Article 26, stating that, “Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so”. The *Explanatory Report* (paragraph 272) notes that Article 26 “constitutes an obligation to Parties to adopt and/or implement legislative measures providing for the possibility of not imposing penalties on victims...”. It comments that, “...the requirement that victims have been compelled to be involved in unlawful activities shall be understood as comprising, at a minimum, victims that have been subject to any of the illicit means referred to in Article 4, when such involvement results from compulsion” (paragraph 273).

²¹⁷ UKBA, *Victims of Trafficking*, accessed on 26 March 2010 at www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/victimsoftrafficking.pdf?view=Binary

²¹⁸ Interview 13 on 5 October 2009 with legal representative.

²¹⁹ Interview 39 on 6 November 2009 with legal representative.

The Convention and its *Explanatory Memorandum* offer no explicit guidance on how this requirement should be interpreted in the case of children (who, if they are recruited for the purpose of any form of exploitation, are to be categorised as ‘trafficked’, even if no abusive means have been used in the course of recruiting or transporting them). The question of how children (of varying age) are compelled or manipulated by traffickers should clearly be taken into account in decisions on whether to prosecute them.

Other international guidance is available in interpreting the message about non-punishment, but, instead of putting the emphasis on “non-punishment”, calls for non-criminalisation, i.e. not arresting, detaining or prosecuting them as criminals. For example, the UN High Commissioner for Human Rights’ *Recommended Principles on Human Rights and Human Trafficking* contain the principle that, “Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons”.²²⁰

Policy in the UK

“...the Crown Prosecution Service makes it clear in its guidance that victims of trafficking who have been forced to commit criminal acts should not be prosecuted if those acts are a direct result of their having been trafficked. However, such issues must, of course, be dealt with on a case-by-case basis, because blanket immunity is not necessarily offered” (Alan Campbell MP, Parliamentary Under-Secretary of State for the Home Department, in Parliament on 20 January 2010).²²¹

In guidance issued on the “Prosecution of Defendants charged with offences who might be Trafficked Victims” in November 2009,²²² the Crown Prosecution Service makes no reference to adults who are in debt bondage. However, it does contain an explicit reference to “theft (in organised ‘pick pocketing’ gangs)” and “cultivation of cannabis plants”, both of which are recognised to be offences that might be committed by trafficked children. It calls on prosecutors to “be alert to the possibility that in such circumstances, a young offender may actually be a victim of trafficking and have committed the offences under coercion”.²²³

What happens in practice: cases involving the cultivation of cannabis

A range of offences are reported to be committed which involve adults or children who are brought to the UK to commit criminal offences. Most involve organised crime, though the levels of criminality and profits vary greatly, for example between cultivating and selling cannabis and the proceeds of begging.

In recent years the police have discovered numerous cannabis farms in England, Scotland and Wales, many of them located in private houses.²²⁴ At many, the adults or children encountered by police when they raided such farms had recently arrived from other countries, notably Vietnam. There are good grounds for considering that some were subjected to forced labour and had been trafficked. However, the prosecutions that have resulted suggest that the UK authorities have great difficulty in identifying anyone arrested in a cannabis farm as a victim of crime. Cultivating cannabis is not the only offence for which people have been charged who are perceived by others to be victims of trafficking, but it illustrates the difficulties experienced by the UK authorities in respecting the non-punishment provision of the Convention.

Example of an adult convicted for farming cannabis

A 36-year-old Vietnamese man was arrested in October 2009, approximately a week after arriving in the

²²⁰ UN High Commissioner for Human Rights, *Recommended Principles on Human Rights and Human Trafficking*, Principle 7, in *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Office of the UN High Commissioner for Human Rights, New York and Geneva, 2002.

²²¹ Hansard, 20 January 2009: Column 124WH, accessed on 12 April 2010 at www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100120/halltext/100120h0009.htm

²²² Crown Prosecution Service, *Human Trafficking And Smuggling*, Guidance updated 05 November 2009, accessed on 12 May 2010 at www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/#a29

²²³ *Ibid.*

²²⁴ For example, the *Daily Mail* reported on 10 March 2009 that, “Twenty-nine forces revealed that they had uncovered more of the drug being grown, including Gwent which detected no factories in 2004 but 151 last year. The largest force in the UK, London’s Metropolitan Police, reported an increase from 206 to 654, while West Midlands saw a rise from 174 to 672”. See, ‘Police raids on cannabis factories on the rise as UK drug cultivation soars’, *Daily Mail*, 10 March 2009, accessed on 25 March 2010 at www.dailymail.co.uk/news/article-1160845/Police-raids-cannabis-factories-rise-UK-drug-cultivation-soars.html.

UK. "In his police interview Dang said he paid an agency more than \$20,000 (more than £12,000) to get in the UK and was in the house for about a week before his arrest... [The defendant] pleaded guilty to producing cannabis between September 23 and October 2".²²⁵

The local media reported the trial judge saying that, "he was satisfied Dang was exploited by others and that his role in the operation was that of a gardener. But he said the matter was so serious only a custodial sentence could be merited." The judge imposed a sentence of 20 months' imprisonment. The Vietnamese man was likely to remain in prison for about half this time (he had spent ten weeks on remand) and then to be deported. In all likelihood he would remain under pressure to repay his debt of US\$20,000 when returned to Vietnam.

In this case and other similar ones, the UK authorities seem to have recognised that cannabis gardeners have been subjected to pressure, but concluded that they were nevertheless responsible for their crime and should be punished. Further, the UK authorities have not felt under any obligation to protect the person concerned from the pressures exerted on them by their traffickers and/or exploiters.

In some cases, women are subject to both sexual exploitation and labour exploitation. A young woman from South-east Asia charged with cultivating cannabis was referred to service provider whilst on remand because she displayed a number of trafficking indicators. She made a disclosure of sexual exploitation and trafficking. However, despite a report given to the court raising concerns she was trafficked, this made no impact and she was sentenced to 1 year and 4 months imprisonment.²²⁶

The authorities are aware of the risk that individuals accused of farming cannabis in the UK may be subjected to additional pressure (from those employing them or who arranged their trip to the UK) to not identify those who have put them to work, notably the possibility that pressure might be brought to bear via interpreters. However, the evidence suggests the authorities have not identified that debts imposed on irregular migrants by those who arrange to transport them and smuggle them across borders result, in some cases, in the debtor being put into what the UN Convention describes as a "servile status", that is to say a form of servitude and forced labour.

More controversially, if an individual arrested in such circumstances is referred to the NRM and given a positive 'reasonable grounds' decision, the Crown Prosecution Service can be made aware of the decision, but nevertheless pursue charges. While it would not be appropriate for the Crown Prosecution Service to grant blanket immunity in such cases, this poses a question about the usefulness of the NRM decision and the protection it provides. It was explained to the Monitoring Group that the NRM decision is of a "lower" level, i.e. civil decision, and as such can be taken into account by CPS, but does not automatically lead to discontinuing prosecution of victims of trafficking. In these circumstances the introduction of the NRM has failed to ensure the rights of trafficked persons under Article 26 of the Convention.

In addition to that, it is questionable to what extent does this situation contribute to the UK's ability to prosecute traffickers and whether it assists in its obligation to combat trafficking.

The Monitoring Group is aware of a few individual cases, where the intervention of the police helped to uphold the non-punishment clause. In the case of an Eastern European woman, police alerted a service provider about a woman that was held in custody, after being arrested for immigration offences and possession of stolen documents. Both the service provider and police were concerned that this woman was trafficked. The police communicated to the court their concerns and the court decided the victim could return home and took no further action against her.²²⁷

d) Prosecution of traffickers

Standards set by the Convention

One of the purposes of the Convention is to combat trafficking in human beings. The Convention also

²²⁵ 'Neighbour sniffed out drug gardener', 15 December 2009, Cheadle Post and Times, accessed on 9 March 2010 at www.thisstaffordshire.co.uk/cheadle/news/Neighbour-sniffed-drug-gardener/Article-1603869-detail/Article.html

²²⁶ Case 70, submitted to the Monitoring group by a service provider between April 2009 – September 2009

²²⁷ Case 159 submitted to the Monitoring Group by a service provider.

recognises that the protection of the rights of trafficked persons is related to the prosecution of those responsible for trafficking.²²⁸

Chapter IV of the Convention deals with “Substantive criminal law” and Chapter V deals with “Investigation, prosecution and procedural law” (including the protection of victims and witnesses).

Reports of prosecutions since April 2009

From a *Freedom of Information* request²²⁹ to the UKHTC in January 2010, it was reported that since April 2009 a total of 36 individuals, 17 of them women, arrested across England and Wales on trafficking offences, had the cases against them heard in court. Of these, four were arrested under section 4(1) of the *Asylum and Immigration (Treatment of Claimants, etc.) Act 2004*, nine were arrested under section 57 of the *Sexual Offences Act 2003*, 19 were arrested under section 58 of the same Act and the remaining four were arrested under both sections 57 and 58. Not all were convicted for these offences. Two of the four arrested under section 4(1) were convicted for other offences, i.e. causing or inciting prostitution for gain and assault, and seven of those arrested under sections 57 and/or 58 were convicted for offences such as causing or inciting prostitution for gain and controlling prostitution for gain. In effect, law enforcement officials found it easier to secure convictions on charges related to exploitation of prostitution, rather than on (more serious) charges related to human trafficking. This has implications for victim witnesses, in terms of their attempts to obtain damages.

A report published in 2009 about human trafficking in Scotland noted that 79 individuals believed to be victims of human trafficking had come into contact with agencies in Scotland between April 2007 and March 2008.²³⁰ However, no prosecutions were brought in relation to the offences committed against these 79 people. One case related to trafficking reached the courts in late 2007, but was reported to have collapsed due to lack of evidence. In considering why there had been no prosecutions for human trafficking by the beginning of 2009, the report’s author noted that it probably resulted from a combination of factors:

- “an unclear intelligence picture;
- low levels of awareness among the public;
- absence of witnesses;
- difficulties with translation during debrief of witnesses;
- further training needs among police and prosecution professionals;
- and some difficulties in obtaining warrants, including a perceived tendency for Sheriffs to favour the familiar language of brothel keeping instead of newer legislation relating to human trafficking”.²³¹

She observed that most of these factors were also likely to be relevant in England and Wales. Other factors that the research of the Monitoring Group revealed to affect the level of prosecutions in the UK included:

- the failure to investigate a case after a presumed trafficked person provided a statement, especially in cases involving migrant workers subjected to servitude (routinely labelled as ‘domestic servitude’ in the UK);
- lack of resources at borough level to conduct relatively expensive trafficking investigations;
- a lack of information sharing among the different agencies involved;
- difficulties in bringing witnesses back to the UK after they had returned to their country of origin or departed from the UK to live elsewhere.

Obstacles to prosecutions

Proving a charge of human trafficking is difficult in the UK. The Crown Prosecution Service considers that, to charge someone with trafficking, it is necessary to have evidence that, at the time of arranging somebody’s travel to the UK (or within the UK), there was an intention by the trafficker to exploit the person following their journey. In effect, insufficient attention was given by those who drafted Section 4 of the *Asylum and Immigration (Treatment of Claimants, etc.) Act 2004* to the sorts of evidence necessary to prove the offences defined in the Act (and how such evidence could be obtained).

²²⁸ *Explanatory Report*, paragraph 57.

²²⁹ *Freedom of Information* request 20090647 answered by UKHTC on 18 January 2010, accessed on 6 April 2010 and available at www.southyorks.police.uk/foi/disclosurelog/20090647-0

²³⁰ Lebov, K., *Human Trafficking in Scotland 2007/08*, Scottish Government Social Research, 2009.

²³¹ *Ibid*, page 14.

In order to improve the level of prosecutions in the UK, law enforcement professionals interviewed by the Monitoring Group suggested trafficking for human beings should be made a police priority and be included in their control strategy.²³² There were also suggestions that it would be helpful to appoint local level special points of contact within the Crown Prosecution Service to deal specifically with trafficking cases (in addition to the existence of a national policy specialist on human trafficking within the Crown Prosecution Service), as the level of understanding and training among prosecutors tends to be very mixed.²³³

Police officers have also raised concerns that the NRM in some cases undermines prosecutions:

“Now, I think that is a negative effect on my investigation. If I arrest a suspect for human trafficking and disclosure comes in court and they say, well the authority say this is not a victim of trafficking, how do I proceed with that?”²³⁴

In addition to these concerns, the Monitoring Group were alerted to instances where the victims were not given positive decisions by the Competent Authorities, despite the fact that police were investigating trafficking.

Furthermore, the Gangmasters Licensing Authority (GLA), that is, the agency most likely to come across cases of labour trafficking and forced labour, currently does not have the authority to investigate and prosecute under the trafficking legislation or the new forced labour offence.

It would seem beneficial to grant the GLA a formal authority and resources to investigate under these laws, given the pro-active nature of the agency as well as its successful operation. The recent report of the Equality and Human Rights Commission supports this.²³⁵

In addition to that, the remit of the GLA should be extended to all industries where gangmasters operate and where instances and risks of forced labour were previously identified, such as construction, cleaning or hospitality.

e) Protection during Criminal Justice Proceedings

Standards set by the Convention

Article 28 of the Convention concerns “Protection of victims, witnesses and collaborators with the judicial authorities”. It requires States Parties to adopt measures necessary “to provide effective and appropriate protection from potential retaliation or intimidation” for victims, witnesses and their family members, in particular both during and after investigations and prosecutions of traffickers. Article 28.2 of the Convention mentions the possibility of “physical protection, relocation, identity change and assistance in obtaining jobs”. The article also refers to providing appropriate protection for organisations which assist trafficked persons during criminal justice proceedings.

Policy in the UK

The authors of a review of measures to protect trafficked persons in England and Wales in 2006 and 2007 were told by the UK authorities that witness protection schemes were potentially available for trafficked persons acting as witnesses in criminal proceedings (under the *Youth Justice and Criminal Evidence Act 1999*), but that no cases had yet met the criteria to require the protection available.²³⁶ They were also told that a variety of in-court protection measures could potentially be used, including “[V]ideo testimony (including testimony taken by video from abroad in countries which are equipped to do so), use of screens, allowing for the giving of evidence in private, reporting restrictions and clearing the public gallery of the court”.²³⁷ However, by 2007 no use had been made of these measures in prosecutions concerning human trafficking.

²³² Interview 16 on 12 October 2009 with law enforcement agency.

²³³ Interview 22 on 20 October 2009 with law enforcement agency.

²³⁴ Interview 45 on 11 November 2009 with law enforcement agency.

²³⁵ Equality and Human Rights Commission, *Inquiry into recruitment and employment in the meat and poultry processing sector*, March 2010.

²³⁶ Office for Democratic Institutions and Human Rights/Organization for Security and Co-operation in Europe, *OSCE/ODIHR 2006/2007 Review on the Protection of Trafficked Persons in England and Wales (National Referral Mechanism Assessment)*, 30 January 2009, pages 32 and 33.

²³⁷ *Ibid.*, page 33.

In England and Wales these are listed in a *Code of Practice for Victims of Crime* issued in 2006.²³⁸ Some of the key provisions of the Code include:

- a right to information about the crime within specified time scales, including the right to be notified of any arrests and court cases;
- clear information from the Criminal Injuries Compensation Authority (CICA) on eligibility for compensation;
- to be told about Victim Support and either referred to them or offered their service;
- an enhanced service for vulnerable or intimidated victims;
- the flexibility for victims to opt in or out of services to ensure they receive the level of service they want.

A similar code was published in Northern Ireland in 1998 and its revision was opened for consultation in October 2009. In Scotland part 2 of the *Criminal Justice (Scotland) Act 2003* stipulates victims' rights. These provisions have been expanded by the *Criminal Justice and Licensing (Scotland) Bill 2009* so that "special measures will be available to child and adult vulnerable witnesses in all criminal proceedings in Sheriff and High Court as well as in trials".²³⁹

As far as potential witnesses are concerned, the Witness Care Unit has a legal obligation to:

- Tell witnesses if they will be required to give evidence;
- Tell witnesses the dates of their court hearings;
- Give witnesses a copy of the '*Witness in Court*' leaflet or other relevant leaflets, if individuals are required to give evidence;
- Tell witnesses about trial results and explain any sentence given within one day of receiving the outcome from the court.²⁴⁰

What happens in practice

The review of measures to protect trafficked persons in England and Wales in 2006 and 2007 commented that "[I]t was reported that victims' identities are not always sufficiently protected and protective measures in court are ad-hoc and not used systematically".²⁴¹ During the review, government officials had explained that decisions to deploy special measures to protect witnesses were made by judges and that (at that time) "judges do not necessarily have adequate knowledge of the particular needs of trafficked victims".²⁴²

The review also highlighted reasons why potential witnesses might be reluctant to testify in courts in the UK:

"Also of particular concern to service providers and victims' lawyers was the fact that following the provision of testimony in court, victims were expected to return to their country of origin where they risked reprisals and re-trafficking and where there was no guarantee of protection. The risks were seen to be aggravated where victims had collaborated with law enforcement in proceedings. Although acknowledged that victims may apply for humanitarian protection or asylum, it was considered unacceptable that longer term protection in the UK was not on offer following the termination of proceedings, as is the case in the Netherlands and Belgium."²⁴³

Despite the introduction of the NRM, this situation had not changed by April 2010.

It is too soon to know if implementation of the NRM has had an impact on the level of overall prosecutions for trafficking offences. Presumed trafficked persons are encouraged to cooperate with police investigations and criminal proceedings and decisions to provide a trafficked person who has received a positive conclusive decision with a residence permit can be based on the police's view that the person can contribute to a police investigation.²⁴⁴ However, some law enforcement officials interviewed by the Monitoring Group did not consider that the 12-month residence permit was sufficient to encourage the

²³⁸ Prepared under the terms of Section 32 of the *Domestic Violence, Crime and Victims Act 2004*, The *Domestic Violence, Crime and Victims Act 2004 (Victims' Code of Practice) Order 2006* came into force in April 2006.

²³⁹ Accessed 11 April 2010 www.scotland.gov.uk/Topics/Justice/criminal-justice-bill

²⁴⁰ Accessed May 2010 and available at www.cps.gov.uk/victims_witnesses/reporting_a_crime/keeping_you_informed.html

²⁴¹ Office for Democratic Institutions and Human Rights/Organization for Security and Co-operation in Europe, OSCE/ODIHR 2006/2007 Review on the Protection of Trafficked Persons in England and Wales (National Referral Mechanism Assessment), 30 January 2009, page 33.

²⁴² *Ibid.*

²⁴³ *Ibid.*

²⁴⁴ Interview 20 on 20 October 2009 with Competent Authority.

cooperation of trafficked persons, given the uncertainty as to what would happen to them after the completion of court proceedings.

Willingness to provide evidence to the police and to cooperate in the criminal justice system does not guarantee presumed trafficked persons that the police will investigate their cases, nor that prosecutors will conclude that there is enough evidence to precede with a prosecution. On a number of occasions, police are reported to have failed to follow up with inquiries, particularly in cases involving trafficking for domestic servitude.²⁴⁵ In others, prosecutors have decided not to prosecute suspected traffickers because they have concluded that there is insufficient evidence.²⁴⁶ Not surprisingly, this has a devastating effect on the morale of trafficked persons who have provided evidence (as decisions not to prosecute do on witnesses in other criminal proceedings).

The Ministry of Justice prepared a leaflet in 2009 with information on the NRM for victims of trafficking,²⁴⁷ which by the beginning of 2010 had been translated into 11 languages other than English. The leaflet was not disseminated widely and can only be obtained by placing orders to the distribution centre.

f) Access to compensation

Standards set by the Convention

Article 15 of the Convention deals with compensation and legal redress. Article 15.1 requires States Parties to “ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings in a language they can understand”. State Parties are also required to provide, in domestic law, “for the right of victims to compensation from the perpetrators” (Article 15.3). Article 15.4 suggests that compensation could be provided by establishing a fund for “victim compensation” or “programmes aimed at social assistance and social integration of victims”, both of which could be funded by assets seized from traffickers.

Policy in the UK

At the conclusion of a criminal proceeding, a defendant who has been convicted of a crime against another individual may be ordered to pay compensation to the victim for any personal injury, loss or damage resulting from the offence.²⁴⁸ The victim may be compensated for personal injury; losses through property damage or fraud; loss of earnings whilst off work; medical and travelling expenses; and pain and suffering.²⁴⁹

Victims of crime are eligible for compensation from the Criminal Injuries Compensation Authority (CICA) in certain circumstances. The October 2009 *Update to the UK Action Plan on Tackling Human Trafficking* does not address the issue of compensation for trafficked persons.

The Criminal Injuries Compensation Authority (CICA) makes decisions on eligibility for compensation. However, it is potentially difficult for those who were coerced to commit illicit activities by traffickers to access this source. Contrary to suggestions made during discussions with stakeholders that preceded the establishment of the NRM, the policy governing residence permits does not allow trafficked persons to remain in the UK specifically to seek compensation or damages. In response to a *Freedom of Information* request in February 2010, Anti-Slavery International was told that, “The policy regarding leave granted to victims of trafficking does not include grants of leave for the purpose of the victim seeking compensation from the trafficker”.²⁵⁰ This is a barrier to trafficked persons seeking and obtaining compensation in the UK and suggests the UK is in breach of Article 15 of the Convention.

What happens in practice

The Monitoring Group did not learn of any case that had been referred through the NRM in which a trafficked person had received compensation. In the few instances known to the Monitoring Group where

²⁴⁵ Interview 23 on 20 October 2009 with legal representative.

²⁴⁶ Cases 141 and 142 submitted to the Monitoring Group in the period September 2009 – January 2010.

²⁴⁷ Criminal Justice System, *Help for victims of human trafficking*, 2009.

²⁴⁸ Section 130(1), *Power of Criminal Courts (Sentencing) Act 2000* (c.6).

²⁴⁹ Criminal Justice System, *Compensation for Victims of Crime* (website), accessed on 29 April 2010 at www.cjsonline.gov.uk/victim/compensation

²⁵⁰ *Freedom of Information* request by Anti-Slavery International, inquiring how many trafficked persons had been given residence permits or any other leave to remain, since 1 April 2009, for the purpose of accessing compensation, answered 9 February 2010.

trafficked persons have received compensation, their proceedings had begun prior to the introduction of the NRM on 1 April 2009.

Although there are four different options under the UK law for trafficked persons to seek compensation,²⁵¹ research by Anti-Slavery International in 2008 identified numerous practical and legal barriers that trafficked persons face in the UK when trying to obtain compensation. The authors of Anti-Slavery International's report concluded that it was unlikely that trafficked persons would receive compensation for their injuries and suffering either from the trafficker or from any statutory agency, such as the Criminal Injuries Compensation Authority.²⁵²

Although this research was carried out before the inception of the NRM, the Monitoring Group did not find any evidence to suggest that the NRM has improved this situation.

The Monitoring Group found that the issue of compensation for trafficked persons was receiving little attention from statutory agencies. In the course of interviews with staff in statutory agencies, it became apparent that compensation is perceived to be one of the last stages in the process of supporting and protecting victims of trafficking, and consequently accorded low priority.

Specific difficulties have arisen for individuals who came to the UK to work as domestic workers, but who were trafficked or subjected to forced labour. In such cases, access to justice may be via Employment Tribunals, rather than via prosecutions of traffickers. However, migrant domestic workers are not entitled to a temporary residence permit for the purpose of pursuing a court case against their employer, whether in cases involving human trafficking or otherwise. In view of the relatively large proportion of cases involving domestic workers which were referred to the NRM in 2009 (99 individuals or 18.7 per cent of all cases referred to the NRM),²⁵³ this is a 'Catch 22' that requires an urgent solution.

In the few instances when Employment Tribunal cases have been successful, there have been challenges in the implementation of fines and victims of trafficking are reported not to have received a penny of the money awarded in court.²⁵⁴

Currently, neither those who receive positive 'reasonable grounds' decisions, nor those with positive conclusive decisions are provided with information about compensation from the Competent Authorities, contrary to the requirements of Article 15.1 of the Convention, which requires the 'competent authorities' not only to provide victims with information from their first contact, but also to ensure it is done in the victim's own language.

The leaflet for victims published by the Ministry of Justice says that "*You may be entitled to compensation either directly from the offender or via the Criminal Injuries Compensation Scheme. Further information is available from the Authority on 0800 358 3601 or by visiting www.cica.gov.uk.*" The Authority phone line or website are not available in other languages. The leaflet alone is insufficient to give effect to the UK's obligations under the Convention.

g) Victim Return

Standards set by the Convention

If a trafficked person is required to leave a country where they have been identified as trafficked, the Convention specifies that the departure should "preferably be voluntary" and their return to their country of origin is to be "with due regard" for their "rights, safety and dignity" (Article 16), meaning that the authorities have an obligation to assess the risks associated with their return and not to proceed with it if significant risks are identified. Article 16.7 says explicitly that, "Child victims shall not be returned to a State, if there is indication, following a risk and security assessment, that such return would not be in the best interests of the child".

²⁵¹ Compensation order in criminal proceedings; application to Criminal Injuries Compensation Authority; civil litigation, in some cases before an employment tribunal.

²⁵² Lam J. and Skrivankova K., *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK*, Anti-Slavery International, 2008.

²⁵³ 'Exploitation Type by Gender/Age', *National Referral Mechanism. Statistical Data*, April to December 2009, accessed on 12 March 2010 at www.ukhctc.org/about-ukhctc#Quarterly

²⁵⁴ Interview 18 on 13 October 2009 with legal representation and interview 23 on 20 October 2009 with legal representative.

The Convention does not interfere with States' powers to remove, expel or forcibly repatriate an individual who has no legal entitlement to be in their territory, when the authorities have confirmed that the individual is not entitled to protection (for example, as a refugee) and faces no (significant) risk in her/his country of origin. However, the Convention suggests (but does not insist) that returns should "preferably be voluntary", i.e. should take the form of assisted voluntary return rather than non-voluntary return. If trafficked persons are obliged to leave a particular country as a matter of routine or policy, it is possible the State may have made no serious effort to meet the requirements of Article 16 of the Convention.

In the case of trafficked children, it is clear that further conditions need to be fulfilled before an assisted voluntary return takes place. These include ensuring that decisions about the child's return make the child's best interests a primary consideration and take the child's own views into account and completing appropriate risk assessments satisfactorily (including a social inquiry with the child's proposed care-giver).

Policy in the UK

When considering asylum applications, the UK authorities have an official list of countries which are defined as "designated States",²⁵⁵ where there is a presumption that there is no risk of persecution (justifying an asylum request). These include all EU Member States and also many other countries throughout the world. Perusal of the current list suggests that the threat of human trafficking has not been sufficiently considered in taking the decision to designate a country. The UK authorities are reported to consult various sources of information in order to assess whether human trafficking constitutes a problem.

All potential victims of trafficking should be informed of the opportunity to make a voluntary return under the Assisted Voluntary Returns for Irregular Migrants (AVRIM) programme which is particularly aimed at those who have been smuggled or trafficked into the UK. This programme is run in partnership with the International Organization of Migration (IOM) who liaises with the applicant.

What happens in practice

In response to a Parliamentary Question in January 2010, the Minister of State for Borders and Immigration reported, "Tracking victims beyond the reflection and recovery period is limited if there is no longer a risk to their safety or health and they have the right to remain in the UK (UK and EEA victims in particular). This makes it difficult to confirm the numbers of voluntary returns in this category. There is currently no record of any enforced return of individuals conclusively found to be victims of trafficking returned to their own country".²⁵⁶ By referring to people who received conclusive decisions under the NRM, however, the Minister of State was not denying that individuals who had received negative 'reasonable grounds' or conclusive decisions had been returned to their countries against their will.

Only a handful of presumed trafficked persons used the services of the IOM to return to their countries in the period 1 April 2009 to 31 March 2010: one person who had been referred to the NRM and four who had not.²⁵⁷

A case of a West African national was submitted to the Monitoring Group. She was previously trafficked to the UK. The court accepted she was trafficked, but she was refused asylum in 2005 and forcibly removed. She was trafficked again into the UK via two European countries, and refused asylum in 2008. She was referred to the NRM and waited over ten weeks to receive a reasonable grounds decision.²⁵⁸

This case not only highlights the need for individualised risk assessment prior to return and the links between prevention of trafficking and protection, but also shows how the failure of the UK to protect an individual led to her being re-victimised.

In May 2009 the High Court examined the case of two unaccompanied children who had been returned in such circumstances. In one of the cases, "a 16-year-old Eritrean girl who came to Britain via Italy, where

²⁵⁵ See the Nationality, *Immigration and Asylum Act 2002* s 94 (4) as amended.

²⁵⁶ Phil Woolas MP, Minister of State for Borders and Immigration, House of Commons debates, Hansard, 12 January 2010: Column 853W, accessed on 19 March 2010 at www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100112/text/100112w0-009.htm#10011271001149

²⁵⁷ Communication from the London office of the International Organization for Migration (IOM), May 2010. Several other presumed trafficked persons were reported to have requested return.

²⁵⁸ Case 78 submitted to the Monitoring Group in the period September 2009 – January 2010.

she had been raped and forced to work as a prostitute, was seized in a dawn raid [in the UK] and returned to Italy without notice. No steps were taken to ensure she would be supported on arrival. Italian officials, unaware of her situation, offered no help. She was left on the streets where eventually a male stranger took her in".²⁵⁹

Risk assessments prior to return

There are inadequate procedures in place in the UK authorities to assess the risks facing trafficked persons who return to their own country (whether they have been recognised as 'trafficked' by a Competent Authority or not).

European Economic Area nationals can, in some circumstances, access financial support to return to their countries of origin from local authorities.²⁶⁰ Local authorities pay for flights or coaches and can accommodate these individuals for one or two nights only if they agree to return to their countries of origin. The only assessments conducted are assessments carried out by local authorities to check on safety and health issues concerning European Economic Area nationals to determine if they are fit to travel, and these are considered too general to identify the specific vulnerabilities of trafficked persons.

h) Prevention strategies

Standards set by the Convention

The Convention calls in Article 5 for "effective policies and programmes to prevent trafficking in human beings" to be established or strengthened, mentioning, as examples, "research, information, awareness-raising and education campaigns, social and economic initiatives and training programmes, in particular for persons vulnerable to trafficking and for professionals concerned with trafficking in human beings" (Article 5.2). As well as calling for "gender mainstreaming" and "Human Rights-based" and "child-sensitive" approaches in the context of prevention, the Convention calls on States Parties to "take appropriate measures, as may be necessary, to enable migration to take place legally, in particular through dissemination of accurate information by relevant offices, on the conditions enabling the legal entry in and stay on its territory" (Article 5.4). The UK authorities have organised publicity campaigns in various countries from which many migrants come to the UK (or are expected to come, for example when Bulgaria and Romania entered the EU). These have put an emphasis on the circumstances in which people may not enter, reside or work in the UK, so it is difficult to interpret them as 'enabling' migration to take place legally and safely.

States Parties are also required to take action to "discourage the demand that fosters all forms of exploitation of persons...that leads to trafficking" (Article 6). The UK's approach has been to opt for regulation to stop migrant workers being trafficked into certain situations of forced labour (with legislation to regulate gangmasters) but to adopt legislation to make it an offence to pay for sexual services from someone who has been forced, coerced, threatened or deceived (i.e. trafficked) into providing those services.

Prevention covers a wide range of possible measures to tackle factors which encourage human trafficking or fail to stop it happening. In addition to those mentioned explicitly in the Convention, they include: ensuring that anti-trafficking organisations have adequate levels of expertise, training and resources; regulating and monitoring the activities of recruitment and employment agencies; tackling corruption (when this is known to facilitate trafficking); identifying factors which contribute to particular individuals being trafficked (such as domestic abuse or the poverty of particular social groups) and tackling these; ensuring (migrant) workers in the informal economy are not exploited; and ensuring appropriate systems are in use at immigration points (borders and consular offices) to check whether individuals might be trafficked, and that such checks do not violate human rights standards.

Blue Blindfold

The Blue Blindfold is an international campaign launched by the UKHTC in December 2007. In the UK it is intended to make law enforcement officials and members of the public aware of the realities of human

²⁵⁹ 'Children deported from UK alone with no safety checks', *The Independent*, 10 April 2010, accessed 11 April 2010 available at www.independent.co.uk/news/uk/home-news/children-deported-from-uk-alone-with-no-safety-checks-1941430.html

²⁶⁰ *Nationality, Immigration and Asylum Act 2002*, Schedule 3.

trafficking. The campaign's strap line is "Open Your Eyes to Human Trafficking" and encourages all sectors of the public to be aware of the dangers of human trafficking.²⁶¹ It has been adopted by a number of international partners of the UKHTC, such as Crime Stoppers International, and is linked with the Blue Heart campaign initiated by the UN Office on Drugs and Crime (UNODC).²⁶²

The Blue Blindfold and its message were used in specific awareness raising campaigns conducted in Westminster and Nottingham in May 2008, in Leeds and Bristol during April and May 2009 and in Northern Ireland in February 2010. By early 2010 the campaign's website reported that, "66,000 police officers and investigators throughout the UK, have seen the Blue Blindfold DVD/Intranet Briefing" (about human trafficking). The Home Office Minister responsible told the House of Commons in January 2010 that, "The Blue Blindfold...approach is recognised as good practice".²⁶³

While some statistics were available by the beginning of 2010 about the numbers of law enforcement officials who had been given information about human trafficking, much less information was available about the impact of this campaign elsewhere. The intention of the campaign appeared to be to make people aware of trafficking so that information would be provided to law enforcement agencies about possible cases. When the campaign was launched in Northern Ireland in February 2010, for example, the relevant Minister was reported to have said,

*"...[W]e must do more and through the Blue Blindfold information campaign, we are raising awareness of the issue. The most valuable asset in combating crime is information and we are asking everyone to open their eyes to the fact that human trafficking is happening in Northern Ireland. If they suspect something, contact the police and perhaps your call could rescue a victim of human trafficking and put those responsible before the courts."*²⁶⁴

Similar awareness-raising campaigns have been conducted in other countries, both to provide information to law enforcement or other officials and to the general public. Indeed, before 2007, both NGOs and the media in the UK had already focused public attention on the issue of human trafficking in the UK, bringing into question whether a general awareness campaign was still needed by 2008.

While the campaign is reported to have facilitated the training of law enforcement officials in the UK, it is not clear that it has influenced others or contributed to preventing human trafficking from occurring. The targets that the campaign aimed to influence have not been well defined. Several years before the UKHTC was set up, in 2004, an evaluation of efforts to prevent human trafficking that were financed in Europe and Central Asia by the US Government's international aid agency, USAID, had noted that public awareness campaigns about human trafficking had been conducted in virtually every country in Europe and Central Asia, but that remarkably little information was available about their impact. The evaluation said that too little had been done to measure the impact of awareness-raising campaigns.²⁶⁵ Elsewhere, one lesson has been that public information initiatives on the subject of human trafficking should be carefully targeted.²⁶⁶ This enables appropriate methods to be adopted for influencing whichever part of the public is targeted (for example men who pay for sex require a different approach to employers of informal agricultural labour, or others who come into contact with agricultural labourers who are subjected to abuse) and for monitoring and evaluating the impact of the methods used. Such targeting has been tried elsewhere in the UK, when the Gangmasters Licensing Authority (see next section) organised radio publicity in 2006 about new

²⁶¹ See www.blueblindfold.co.uk/aboutukhtc/ accessed on 14 March 2010.

²⁶² The 'Blue Heart' campaign designed by the UN Office on Drugs and Crime "aims to make the Blue Heart into an international symbol against human trafficking" (in much the same way that the red ribbon has become the international symbol of HIV/AIDS awareness). It has not yet had the desired effect. See, 'What is the Blue Heart Campaign?', UNODC, accessed on 15 March 2010 at www.unodc.org/blueheart/en/about-us.html

²⁶³ Alan Campbell MP in Parliament on 20 January 2010, accessed on 21 January 2010 at www.theyworkforyou.com/whall/?id=2010-01-20a.103.0&s=trafficking#g124.1

²⁶⁴ Paul Goggins MP, reported in 'Blue Blindfold campaign highlights human trafficking threat', Northern Ireland Office Media Centre, 23 February 2010, accessed on 14 March 2010 at www.nio.gov.uk/blue-blindfold-campaign-highlights-human-trafficking-threat/media-detail.htm?newsID=16419

²⁶⁵ Rosenberg, R., Lazaroiu S., and Tyuryukanova, E., *Best Practices for Programming to Prevent Trafficking in Human Beings in Europe and Eurasia*, Development Alternatives Inc for USAID, September 2004, pages 7 and 8.

²⁶⁶ "A good information campaign has to apply good programme logic, collect and analyse information and demonstrate how a course of action can reasonably be expected to provoke the changes which are sought...", Dottridge, M., *Action to Prevent Child Trafficking in South Eastern Europe. A Preliminary Assessment*, UNICEF and the Terre des Hommes International Federation, Geneva, 2006, page 68.

regulations for labour providers and was able to reach specific conclusions about what had been achieved in the course of its publicity campaign.²⁶⁷

In January 2010 South Yorkshire Police²⁶⁸ was reported to be seeking tenders from companies or individuals to continue the implementation of this campaign.

Regulation of recruitment and employment practices involving migrant workers

As migrant workers are known to have been both trafficked and subjected to forced labour, it is important that laws are in place to prevent them being subjected to abuse (including forced labour) and appropriate procedures in force to check that migrant workers are not subjected to abuse or discrimination in the workplace. Once enforced, such laws help prevent forced labour (and related trafficking) and other forms of abuse.²⁶⁹

The Gangmasters Licensing Authority (GLA) issued approximately 1,000 licences in its first year of operation (April 2006 to April 2007). By April 2010 there were reported to have been nine convictions under the *Gangmasters (Licensing) Act 2004* (six in England and three in Scotland): seven for operating without a licence, one for using an unlicensed gangmaster and one for obstructing a GLA officer.²⁷⁰ The courts have heard, but not yet concluded, two other cases.

In a report issued in March 2010 about the meat and poultry processing industry, the UK's Equality and Human Rights Commission recommended specifically that, "The GLA [Gangmasters Licensing Authority] be given formal authority and appropriate resources to investigate the new offence of forced labour when the legislation comes into force" and that, "The government produce guidance for work agencies and employers on forced labour, including clarifying the circumstances where the actions of recruitment consultants, including forced overtime, can amount to forced labour".²⁷¹ The Commission also recommended that "Work agencies" (i.e. gangmasters and employment agencies) should "Make sure all recruitment consultants and managers understand that coercion of agency workers is contrary to the GLA's licensing standards and could result in the agency losing its licence".²⁷²

The UK has some laws and procedures in place to protect migrant domestic workers. The visa for the Overseas Domestic Workers now allows migrant domestic workers who come to the UK with a specific employer to change their employer without losing their immigration status. The House of Commons Home Affairs Select Committee has stated that it agrees that "to retain the existing Migrant Domestic Workers visa and the protection it offers to workers, is the single most important issue in preventing forced labour and trafficking of such workers".²⁷³

Migrant domestic workers with valid visas who can identify an alternative employer and obtain employment with that person may thus be able to escape from situations of forced labour or trafficking, go to the police without fear of deportation, and access the employment tribunal to enforce their employment rights. If they wish to continue working, for example to pay off debts incurred in migration or support their families back home, migrant domestic workers can do so, while continuing to pay UK taxes. Greater protection would be offered if subsequent employment were not limited to work as a domestic worker. At present, however, this visa regime does not protect domestic workers accompanying diplomats, who enter on a separate visa and who make up a significant proportion of the domestic workers referred into the NRM. There is also a lack of protection as far as remuneration for live-in domestic workers. The 'family worker exemption' within the *National Minimum Wage Act Regulations 1999* states that workers who live as members of the family

²⁶⁷ See Gangmasters Licensing Authority, *Measuring the success of the GLA commercial radio campaign in August 2006*, 2 November 2006, accessed on 16 March 2010 at www.gla.gov.uk/embedded_object.asp?id=1013030

²⁶⁸ South Yorkshire Police was the legal entity of the UKHTC until 1 April 2010, when it moved under the umbrella of the Special Organised Crime Agency (SOCA).

²⁶⁹ ILO, *Trafficking for Forced Labour. How to monitor the recruitment of migrant workers*, ILO Special Action Programme to Combat Forced Labour, Geneva, 2006.

²⁷⁰ Gangmasters Licensing Authority, *Wisbech Gangmaster Convicted* (press release), 28 April 2010.

²⁷¹ Equality and Human Rights Commission, *Inquiry into recruitment and employment in the meat and poultry processing sector, Report of the findings and recommendations*, London, March 2010, page 39, recommendations 25 and 26.

²⁷² *Ibid.*, Recommendation 40.

²⁷³ House of Commons Home Affairs Committee, *The Trade in Human Beings: Human Trafficking in the UK*, Sixth Report of Session 2008–09, Volume I, accessed on 30 April 2010 at www.publications.parliament.uk/pa/cm200809/cmselect/cmhaff/23/2306.htm#a12

need not be paid the UK's National Minimum Wage.²⁷⁴ This provision has the effect of facilitating the exploitation of migrant workers in this sector and seems not to be the purpose for which the 'family worker exemption' was originally proposed.

Influencing demand for the services of people who have been trafficked

The Convention provisions on discouraging demand mention the importance of research on methods and best practice (for discouraging demand), emphasise the role of media and civil society and refer explicitly to "information campaigns" (Article 6.c) that target specific audiences and "educational programmes" (Article 6.d) for school children, which would tell them about human trafficking and "also alert them to gender issues, questions of dignity and integrity of human beings, and the consequences of gender-based discrimination".²⁷⁵ State Parties are required to consider making it an offence to use the services of a person who is being exploited "with the knowledge that the person is a victim of trafficking in human beings" (Article 19). The *Explanatory Report* (paragraph 233) points out that this Article is intended, "...to punish those, who by buying the services exploited, play a part in exploiting the victim".²⁷⁶

Recent legislation covering all parts of the UK is intended to stop people paying for sex with anyone who has been coerced, deceived or subjected to force.²⁷⁷ It comes in addition to a range of laws which already made it an offence to offer money in exchange for sex in public places. While it is too early to judge whether such laws will have any impact on patterns of human trafficking, initial, private comments from both police and prosecutors have suggested that it will be difficult to obtain evidence to secure convictions under these laws.

There is considerable controversy about such measures, as evidenced by the debates in Parliament during the passage of the legislation. There is concern that it is difficult to prove that people who pay for sex were aware that someone they paid to have sex with had been coerced, deceived or subjected to force. There is also concern as to the extent to which the measures will prove counterproductive, as some claim it may reduce the chances of 'punters' endeavouring to assist a person who has been trafficked. Although similar legislation has been adopted in other European countries, it has rarely resulted in prosecutions or convictions.

i) Coordination with Civil Society

Standards set by the Convention

With respect to coordination with civil society, the Convention calls for "Co-operation with civil society" (Article 35), requiring States Parties to "encourage state authorities and public officials, to co-operate with non-governmental organisations, other relevant organisations and members of civil society, in establishing strategic partnerships with the aim of achieving the purpose of this Convention".

Paragraph 353 of the *Explanatory Report* points out that, "Such strategic partnerships may be achieved by regular dialogue through the establishment of Round-table discussions involving all actors. Practical implementation of the purposes of the convention may be formalised through, for instance, the conclusion of memoranda of understanding between national authorities and non-governmental organisations for providing protection and assistance to victims of trafficking."

²⁷⁴ *National Minimum Wage Act Regulations* 1999 (accessed on 30 April 2010 at www.opsi.gov.uk/si/si1999/19990584.htm#12) interpret the provisions of the *National Minimum Wage Act* 1998. The 'family worker exemption' says that, "In these Regulations 'work' does not include work (of whatever description) relating to the employer's family household done by a worker where"... "the worker resides in the family home of the employer for whom he works", or "the worker is neither liable to any deduction, nor to make any payment to the employer, or any other person, in respect of the provision of the living accommodation or meals" or "the worker resides in the family home of the employer".

²⁷⁵ Paragraph 110, Council of Europe *Convention on Action against Trafficking in Human Beings Explanatory Report*.

²⁷⁶ The same paragraph of the *Explanatory Report* also points out that [this] "provision is not concerned with using the services of a prostitute as such. That comes under Article 19 [of the Convention] only if the prostitute is exploited in connection with trafficking of human beings – that is, when the components of the Article 4 definition [of trafficking in human beings] are present together".

²⁷⁷ Section 4 of the *Sexual Offences (Scotland) Act* 2009, punishing "sexual coercion" and Section 14 of the *Policing and Crime Act* 2009 (applicable in England, Wales and Northern Ireland), making it an offence to pay "for sexual services of a prostitute subjected to force". See sections 2.2 and 2.3 above.

What happens in the UK

The UK Government has conducted consultations with civil society organisations since 2006, when a draft Action Plan was issued for consultation. Numerous NGOs told the Monitoring Group that they had indeed attended consultations and given their opinions on a wide range of issues, but they felt that these were fairly consistently ignored, particularly when the Government had to choose between a course of action which would be in the best interests of trafficked adults or children and a course of action which would allow the authorities to give priority to their concerns about illicit immigration. This was also the impression of NGOs which provided an expert opinion in support of a referral to the NRM from April 2009 onwards. Their conclusion was that they were not in a “strategic partnership” with either the Home Office or statutory agencies. Whether this is a matter of perception or reality (and this report indicates there are good reasons to suspect it is the latter), this is evidence of a failure by the UK authorities to coordinate with civil society.

A few civil society organisations have been embraced more closely by government departments than others, receiving statutory funding and, in fewer cases, such as the POPPY Project, for example, having their expertise recognised (in the case of the POPPY Project, in caring for women trafficked into sexual exploitation). Others, including some who receive government funding, found that, following the introduction of the NRM, Competent Authorities were reluctant to acknowledge their expertise, particularly in relation to the identification of trafficked persons.

Appendix 6: Issues in Northern Ireland, Scotland and Wales

The following three sections address specific issues which arise in Northern Ireland, Scotland and Wales, due to the responsibilities and challenges of devolved government. Although the Convention was implemented across the UK and most of the points raised in the report apply equally to all parts of the UK, including Northern Ireland, Scotland and Wales, the implications for victim support and protection in general, and policing and justice in Scotland and (since April 2010) Northern Ireland in particular, are affected by devolution as set up in the *Government of Wales Act 1998*, the *Scotland Act 1998* and the *Northern Ireland (St Andrews Agreement) Act 2006* respectively.

a) Northern Ireland

The Northern Ireland Assembly, the devolved legislature for Northern Ireland, was restored in May 2007 following the acceptance of the St Andrews Agreement in 2006. The Assembly has powers to appoint the Northern Ireland Executive and to legislate over a range of devolved matters, most importantly for our purposes, health and social development. The Northern Ireland Office (NIO) is responsible for overseeing the Northern Ireland devolution settlement and representing Northern Ireland interests at UK Government level and UK Government interests in Northern Ireland. On 12 April 2010, the Northern Ireland Office transferred responsibility for policing and criminal justice to the Northern Ireland Assembly and Executive²⁷⁸ and David Ford MLA (Member of the Legislative Assembly) became the first Minister of Justice at the Department of Justice. Matters which remain the responsibility of Westminster are, among others, international relations and immigration and asylum.

Devolution, as in Wales and Scotland, has added an extra layer of issues in the implementation of the Convention in Northern Ireland.

In the run-up to the ratification of the Convention, the Office of the First Minister and Deputy First Minister established an Inter-Departmental Group on Human Trafficking in Northern Ireland in order to determine how to ensure that Northern Ireland complied with the Convention. This Group still convenes quarterly to discuss and evaluate anti-trafficking measures in Northern Ireland. In March 2009, Paul Goggins MP, Minister of State, announced a new support package for trafficked adults identified in Northern Ireland. The scheme ran as a pilot for 12 months, starting on 1 April 2009, the day the Convention entered into force in the UK and was financed with £60,000 provided by the UK Government through the Northern Ireland Office. Paul Goggins MP asserted that, "... the measures I am introducing will deliver a victim-led and comprehensive package of care and support services".²⁷⁹

The Women's Aid Federation in Northern Ireland (Women's Aid) was to look after women trafficked for sexual exploitation and Migrant Helpline, based in South East England, was to look after any adult men trafficked for sexual exploitation and all adults trafficked into forced labour. The Northern Ireland Office was responsible for the providing support to trafficked adults from the time they were referred through the National Referral Mechanism until they obtained leave to remain in the UK.

To ensure Northern Ireland was compliant with the Convention and that trafficked persons would not be excluded from health care, social security and housing, the Department of Health, Social Services and Public Safety (DHSSPS) introduced in 2009 a minor legislative change to the regulations governing access to healthcare services.²⁸⁰

Under the *Children (Northern Ireland) Order 1995* Health and Social Care Trusts in Northern Ireland are responsible for promoting and safeguarding the welfare of all children in need of protection. Trusts are therefore responsible for the care of each unaccompanied minor or trafficked child from the point at which the child is recovered or is brought to the attention of the Trust.

²⁷⁸ See www.nio.gov.uk/index/about-the-nio.htm accessed on 26 April 2010

²⁷⁹ See www.nio.gov.uk/goggins-announces-extensive-new-support-services-for-victims-of-human-trafficking/media-detail.htm?newsID=15921&keywords=paul accessed on 10 November 2009.

²⁸⁰ Interview 48 on 11 November 2009 with statutory agency. The *Provision of Health Services to Persons not Ordinarily Resident Regulations (Northern Ireland) 2008* made a number of amendments to the *Provision of Health Services to Persons not Ordinarily Resident Regulations (Northern Ireland) 2005* to meet the United Kingdom's obligations in relation to health and medical care under the Convention."

When preparing for Operation Pentameter II in 2007, the PSNI and the DHSSPS developed a protocol setting out agreed arrangements between Trusts and the police for the care and protection of any child victim recovered during the Pentameter operation. This protocol was issued in October 2007 and has now been superseded by draft interim joint DHSSPS and PSNI guidance,²⁸¹ issued to Trusts in April 2010 and due shortly to be published in its final form. In addition to the responsibilities of Trusts for the care of children, the 2010 interim guidance sets out the arrangements for the referral by Trusts of suspected child victims of trafficking to the Competent Authority through the NRM and the expectations regarding the continuing care of children who remain in Northern Ireland following a decision by the Competent Authority. This has been distributed to all children's services managers and Trusts' Gateway Team social work practitioners responsible for receiving referrals of children. A group representing frontline social work practitioners from each Trust, the Northern Ireland Guardian ad Litem agency and representatives from the PSNI Care Units has advised the DHSSPS on additional matters to be included when the guidance is issued in final form.

With reference to the care of adults, the DHSSPS and the PSNI in preparation for Operation Pentameter II in 2007 developed a joint protocol for the support of adult victims of trafficking by Trusts and the police. This has been superseded by the arrangements established by the Department of Justice (previously the Northern Ireland Office) for trafficked persons to receive accommodation, care, counselling and support by the Women's Aid Federation and the Migrant Helpline during the recovery and reflection period. If a victim obtains leave to remain in the UK and there is a continuing need for social care services beyond the recovery and reflection period, Trusts are responsible for assessing need and, where relevant, providing services under the *Health and Personal Social Services (Northern Ireland) Order 1972*. The DHSSPS is working to produce guidance for Trusts on their role in the support of adult trafficked persons in the context of existing policy as well as procedural guidance on the safeguarding of vulnerable adults.

Funding to meet any additional responsibilities under the Convention has not been provided to the DHSSPS or Trusts.

An Organised Crime Task Force (OCTF) was established in 2000 to provide a multi-agency partnership approach to tackling organised crime in Northern Ireland. It does not have operational responsibilities, but provides strategic direction through a number of subgroups,²⁸² including an expert group on immigration and human trafficking. This has sought to improve cooperation in tackling human trafficking in Northern Ireland between devolved and non-devolved agencies such as the Police Service in Northern Ireland (PSNI), HM Revenue and Customs, the Serious Organised Crime Agency, the UK Border Agency and the Gangmaster Licensing Authority. In its last annual report, it confirmed that in the period 2008/09, 11 trafficked adult women were rescued in Northern Ireland: six were victims of sexual exploitation, two victims of domestic servitude and three victims of forced labour.²⁸³ Since June 2008, there have been four operations into human trafficking and a total amount of £28,000 in cash was seized and assets subject to ongoing confiscation orders amounting to £150,000.²⁸⁴ Of this, the PSNI allocated £25,000 to pay for support to trafficked persons in Northern Ireland.²⁸⁵ The only conviction of a trafficker in Northern Ireland was later overturned on evidential grounds.²⁸⁶

In 2008, the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland jointly commissioned the Institute for Conflict Research to conduct a scoping study into the nature and extent of human trafficking in Northern Ireland.²⁸⁷ The research was completed just a few months before the Convention entered into force. The scoping study, *The Nature and Extent of Human Trafficking in Northern Ireland*, was published in February 2010 with a list of 12 recommendations on service provision, identification of victims, forced labour, training of law enforcement agencies, on data collection and on the criminal justice sector. The Monitoring Group supports these recommendations. The first of the recommendations suggests:

²⁸¹ *Working Arrangements for the Welfare and Safeguarding of Child Victims/Suspected Victims of Trafficking* (DHSSPS/PSNI, 2010).

²⁸² Organised Crime Task Force, 'Annual Report & Threat Assessment 2009 – Organised Crime in Northern Ireland', page 8.

²⁸³ *Ibid.*, page 19.

²⁸⁴ *Ibid.*, page 20.

²⁸⁵ *Ibid.*, page 2.

²⁸⁶ Interview 42 on 10 November 2009 with law enforcement and interview 45 on 11 November 2009 with law enforcement.

²⁸⁷ See www.epacvaw.org/spip.php?article497 accessed on 27 April 2010.

“A co-ordinated, multi-agency approach, led by the Department of Health, Social Services and Public Safety along with the PSNI, should be established to co-ordinate services for victims of trafficking to and within Northern Ireland. Provision of services for children and young people arriving in Northern Ireland unaccompanied, and those (in care or otherwise) who may be at risk of internal trafficking, should be given priority. The practice of placing unaccompanied minors in bed and breakfast accommodation without support should be abolished. Non-governmental organisations with experience in the field of child protection should be resourced to introduce the type of protective accommodation necessary for children trafficked into Northern Ireland and those at risk of internal trafficking”.²⁸⁸

However, the responsibility for the co-ordination of services for victims of trafficking to and within Northern Ireland does not fall to the DHSSPS, but rather to the Department of Justice. The Monitoring Group supports the need for unaccompanied minors to be provided with appropriate support and accommodation. The Monitoring Group has learned that the DHSSPS is supporting a regional initiative aimed at developing appropriate accommodation with support for vulnerable young people aged 16-17 years for whom care in traditional foster care or children’s homes settings is not appropriate.

The PSNI is reported to have developed an education package with the UKHTC to increase the level of awareness on human trafficking among police officers in Northern Ireland. The package was aimed at senior officers and supervisors initially, but is intended to be used to educate all officers in the future.

What happens in practice

Monitoring Group staff visited Northern Ireland in November 2009 and contacted key agencies again in April 2010. During November 2009, the Monitoring Group organised a focus group and a total of 11 interviews (either face-to-face or, when this was not possible, telephone interviews) with statutory and non-statutory agencies in Northern Ireland: five interviews were conducted with NGOs, two with law enforcement, three with statutory agencies and one with a legal representative.

It was challenging to gather specific information on the numbers of people identified and referred through the NRM in Northern Ireland, as the UKHTC did not publish figures specific to Northern Ireland. Nor did the Northern Ireland Office or the Northern Ireland Assembly develop a system to collect and publish data on human trafficking in Northern Ireland. A *Freedom of Information* request that resulted in a response published on the South Yorkshire Police Service webpage in September 2009²⁸⁹ confirmed that between 1 April 2009 and 30 June 2009, a total of eight people in Northern Ireland had been referred to the NRM. All were adult women. Seven had been trafficked for sexual exploitation and one for domestic servitude. Six of the seven women trafficked for sexual exploitation were Chinese. They were identified in the course of a multi-agency operation (Operation Sleek) led by the PSNI in May 2009.²⁹⁰ No child in Northern Ireland was reported to have been referred to the NRM by 30 June 2009.

In April 2010, the PSNI confirmed to the Monitoring Group that, between 1 April 2009 and 1 April 2010, a total of 25 people had been identified as presumed trafficked persons. Of these 25, 21 had been referred to the NRM. The remaining four did not give their consent to being referred. Of the 21 referrals, four were children. The Monitoring Group has learnt that at least three decisions of cases referred from Northern Ireland to the Competent Authorities are being judicially reviewed at the time of writing.

A total of 19 participants from statutory and non-statutory agencies in Northern Ireland attended the focus group organised by the Monitoring Group in November 2009 to discuss the implementation of the Convention and its impact in Northern Ireland. The key issues discussed that were specific to Northern Ireland included the following:

- Participants confirmed that although the Northern Ireland Assembly and the Northern Ireland Office had informed relevant departments and agencies about the introduction of the NRM, the fact that no formal information campaign had taken place meant that frontline practitioners would not necessarily know what they were supposed to do when somebody presented as a victim of trafficking;

²⁸⁸ *The Nature and Extent of Human Trafficking in Northern Ireland*, page 84.

²⁸⁹ Given the lack of legal status of the UK Human Trafficking Centre prior to becoming part of SOCA in April 2010, *Freedom of Information* requests were made and published via South Yorkshire Police. Available at www.southyorks.police.uk/foi/disclosurelog/20090479 and accessed by the Monitoring Group in January 2010.

²⁹⁰ See www.belfasttelegraph.co.uk/news/local-national/trafficked-women-rescued-from-chinese-mafia-brothels-14318852.html and news.bbc.co.uk/1/hi/northern_ireland/8072576.stm, accessed by the Monitoring Group in November 2009.

- There were concerns that the NRM did not take into account the specificity of Northern Ireland's structures. For example, in Northern Ireland it is the Health and Social Care Trusts which provide services and can therefore act as First Responders, not local authorities. Participants in the focus group consequently felt the NRM needed adapting for use in Northern Ireland and that there should be a central point of contact in Northern Ireland for the NRM and a single coordinator with oversight of all the different processes that a trafficked person goes through;
- There were also calls for a more localised NRM in Northern Ireland. The UK Border Agency has a regional division responsible for Northern Ireland. However, although two UK Border Agency staff were trained in Belfast to act as decision makers, they were moved to other positions and decisions were subsequently made by Competent Authorities based in Glasgow, London and elsewhere in the UK. This situation was resolved soon after and there are now two Competent Authority case owners based in Belfast, but there are still no specialised immigration officials in Northern Ireland who had appropriate training to interview children, and whenever the need arises, an official is brought from Glasgow;
- Participants agreed that the commitment to support trafficked women in Northern Ireland through the Women's Aid Federation was a positive step and had improved the many challenges faced previously by agencies during Operation Pentameter II. Participants thought that an organisation based in Northern Ireland should be responsible for providing support to individuals trafficked for forced labour, rather than Migrant Helpline; participants knew that Migrant Helpline can support trafficked persons for forced labour in Northern Ireland and have support workers based in Northern Ireland, but were concerned because its headquarters are based in South East England;
- In Northern Ireland, there was a perception that all presumed trafficked persons are referred through the NRM by statutory agencies, i.e. the police or, in the case of children, Health and Social Care Trusts. If a trafficked woman contacted Women's Aid, the view was that the NGO would have to first refer her case to the police so that a formal referral to the NRM could be made. There were calls for Northern Ireland's NGOs with expertise in supporting trafficked persons to be recognised as First Responders in the same way that some NGOs in other parts of the UK have been;
- There were concerns about the limited access and professionalism of interpreting services available in Northern Ireland and how this sometimes forces certain practitioners to rely on interpreters working over the telephone or others whose independence and links with the community speaking their language are not sufficiently clear to be sure that they are not influenced by traffickers;²⁹¹
- There were also concerns about the legal representation that presumed trafficked persons may have access to upon arrival in Northern Ireland. One participant explained how, if a person arrives in Northern Ireland on a Friday evening, they would only get representation from those working out-of-hours, which may be poor and not prevent them being removed to Scotland over the weekend;
- At the time of the focus group, participants confirmed that only two social workers in Northern Ireland were qualified to carry out age assessments although they were no longer in these posts. This situation has not changed at the time of writing, but the DHSSPS has confirmed that the Health and Social Care Board has arranged Merton compliant age assessment training for ten social workers, including two training staff. This will take place in June 2010;
- There were concerns about services available to A8/A2 nationals, especially boys over the age of 16 identified in rural areas, who could not have any recourse to public funds. The Department of Health, Social Services and Public Safety is to issue guidance on entitlement to social care services by people who have no recourse to public funds. It is scheduled to also re-issue guidance on private fostering in 2010..There were suggestions from participants for the Assembly or Executive should make funds available in the interim to deal with people in a critical situation;
- There were concerns about how the land border with the Republic of Ireland may have an impact on human trafficking in Northern Ireland. This is not well understood and participants felt that more attention ought to be paid to the fact that migrants may be moved back and forth without them understanding that they are in different jurisdictions. Participants also highlighted the difficulties of distinguishing between migrants who are exploited and face very bad working and living conditions and those who have been trafficked.

²⁹¹ In Northern Ireland, there exists a professional regional interpreting service available to Health and Social Care Trusts, which was set up in 2004 and reviewed in 2005 and is currently funded with £0.5 million. All staff in Health and Social Care Trusts have access to this service. Some GPs who are not part of Trusts can also access it. However, some staff fail to use the service but the Monitoring Group had no information as the reasons why this is so.

During the first six months of the Women's Aid project supporting adult women trafficked for sexual exploitation, the Northern Ireland Office guaranteed financial support for a week between the time of reception and the time the Competent Authorities issued their 'reasonable grounds' decision. This period was originally deemed sufficient as Competent Authorities were expected to issue decisions within five days of receiving a referral. However, in practice, as elsewhere in the UK, decisions took much longer than the initial five days and Women's Aid found themselves with potentially unpaid bills. The Northern Ireland Office therefore extended the period of a week and committed itself to finance the assistance provided to all presumed trafficked persons supported by Women's Aid or Migrant Helpline from the time of their reception until a decision was made by the Competent Authority, regardless of how long this took. In January 2010, the Northern Ireland Office reviewed the protection package for trafficked persons with the collaboration of all the stakeholders involved and made the commitment to continue financing the package for another six months until September 2010. From September 2010 onwards, due to the recent devolution of crime and justice in Northern Ireland, this will become the responsibility of the Department of Justice, which is expected to request tenders for these services. The Northern Ireland Office told the Monitoring Group that it planned to publish the results of its review in June 2010.

On 23 February 2010, the Northern Ireland Office alongside other devolved and non-devolved agencies and with the assistance of the UKHTC launched the Blue Blindfold campaign to raise awareness among the general public on the existence of human trafficking in Northern Ireland. The Northern Ireland Office told the Monitoring Group that it planned to evaluate the impact of the campaign, but only in terms of the number of telephone calls received by Northern Ireland Crimestoppers with requests for information on trafficking-related crimes and also the number of hits to the Northern Ireland Office webpage on the campaign.

The Monitoring Group concluded that there is a clear need to pay more attention to the issue of human trafficking across the border with the Republic of Ireland. The Monitoring Group was informed of Operation Gull, a joint operation concerning irregular migrants, run jointly by the Garda Síochána (the police force of the Republic of Ireland), the PSNI and the UK Border Agency. This has been running intermittently since 2005. However, this Operation has never identified a single victim of trafficking and no statistics are available about the number of people who have been questioned, detained or removed as a result.

According to the *Annual Report & Threat Assessment 2009* published by the Organised Crime Task Force, from the beginning of 2008 until the end of March 2009 the PSNI uncovered 82 cannabis factories in Northern Ireland and 77 people were charged in connection with them.²⁹² However, there were no references in the report about the nationalities and age range of those charged and prosecuted, making it difficult to establish if migrants might have been trafficked into Northern Ireland to work on cannabis farms. The Monitoring Group learnt that the Public Prosecution Service had not issued guidance on when to prosecute defendants who are charged with offences they may have committed as a result of being trafficked into Northern Ireland.²⁹³

Recommendations to the Northern Ireland Office and the Northern Ireland Executive

- The establishment of an ALL Northern Ireland Human Trafficking Group across devolved and non-devolved, statutory and non-statutory agencies to establish an integrated approach to human trafficking in the province, especially in terms of victim support;
- The appointment as First Responders of NGOs with expertise and experience in working with trafficked persons in Northern Ireland;
- 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;

²⁹² Organised Crime Task Force, *Annual Report & Threat Assessment 2009 – Organised Crime in Northern Ireland*, 2009, page 21.

²⁹³ The Public Prosecution Service (PPS) for Northern Ireland *Code for Prosecutors* was revised in 2008 (and accessed on 13 May 2010 at www.ppsni.gov.uk/default.aspx?CATID=77).

- 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 arrested, charged and successfully prosecuted under trafficking and trafficking-related offences;
- The appointment of a specific individual to have 'lead' responsibility on the issue of human trafficking in all relevant devolved and non-devolved government departments as well as other non-statutory agencies in Northern Ireland;
- An evaluation of the impact of the Blue Blindfold campaign that would be made public in 2011 and that would involve more than a register of the number of hits or calls to particular web pages or services;
- An evaluation in 2011 of the training packages available to frontline practitioners and officers developed by the Department of Health, Social Services and Public Safety and the Police Service in Northern Ireland and the effectiveness of the arrangements for the support of child and adult trafficked victims;
- To continue to ensure that guidance about the support to be provided to trafficked persons is developed by the Department of Health, Social Services and Public Safety, issued and disseminated adequately, including guidance focusing on trafficked children.

b) Scotland

The Scottish Parliament was established in 1999. The devolved Government of Scotland is responsible over specific matters such as justice and home affairs, health and social services, education and economic development.²⁹⁴ The Government is led by a First Minister, elected by the Scottish Parliament, who appoints a Cabinet of Scottish Ministers.²⁹⁵ The reserved matters for which the UK Parliament continues to legislate for Scotland, as in the rest of the UK, include foreign policy and immigration. The Cabinet Secretary for Justice Scotland, Kenny MacAskill MSP (Member of the Scottish Parliament) in April 2010, is responsible for ensuring that Scotland is fully compliant with the provisions of the Convention. Kenny MacAskill MSP sits in the UK Inter-Departmental Ministerial Group which is responsible for ensuring compliance with the Convention, as well as having an overseeing role of the implementation of the *UK Action Plan*. The Scottish Government is responsible for the provision of support to adults and children identified in Scotland as 'trafficked' and for arresting and prosecuting traffickers.²⁹⁶ The relevant legislation specific to the Scottish context was addressed in chapter 4 (4.1.1).

In the past three years, a number of reports looking into the extent and nature of human trafficking in Scotland have been published. In 2008, the Scottish Government Analytical Services published the results of an investigation conducted during 2007/2008 to examine the extent of human trafficking in Scotland and to analyse the key challenges for policing and victim care in the Scottish context.²⁹⁷ It found evidence of 79 trafficked persons, most of whom were adult women who had been trafficked for sexual exploitation. This report established a clear link between human trafficking and other forms of organised crime in Scotland, such as cannabis cultivation and money laundering.²⁹⁸ In the same year, the Scottish office of Amnesty International UK published a report examining the responses of the Scottish Government and the UK Government in four specific areas of the Convention prior to its coming into force in April 2009.²⁹⁹ Both reports highlighted that anti-trafficking initiatives in Scotland, as in the rest of the UK, paid more attention to adult women trafficked for sexual exploitation than to trafficking for forced labour or domestic servitude.

The research for both reports was conducted between April 2007 and March 2008, which coincided with Operation Pentameter II.³⁰⁰ A Regional Intelligence Cell for Scotland was established within Strathclyde Police during this operation, which, as with Operation Pentameter I, involved the eight police forces in Scotland as well as the Scottish Crime and Drug Enforcement Agency.³⁰¹ Although the figures published by UKHTC do not provide a breakdown by jurisdiction, the Scottish Government has reported that this

²⁹⁴ See www.scotland.gov.uk/About/18060/11552 accessed 28 April 2010.

²⁹⁵ See www.scotland.gov.uk/About/18060/11552 accessed 28 April 2010.

²⁹⁶ Amnesty International Scotland, *Scotland's Slaves: An Amnesty International briefing on trafficking in Scotland*, Edinburgh, 2008, page 3.

²⁹⁷ Lebov, K., *Human Trafficking in Scotland 2007/08*, Scottish Government Social Research, 2009, page 2.

²⁹⁸ Lebov, K., *Human Trafficking in Scotland 2007/08*, Scottish Government Social Research, 2009, page 12.

²⁹⁹ These four areas were identification, support and accommodation, immigration and asylum protection and non-punishment.

³⁰⁰ Operation Pentameter II ran between October 2007 and March 2008.

³⁰¹ Lebov, K., *Human Trafficking in Scotland 2007/08*, Scottish Government Social Research, 2009, pages 3-4.

second operation resulted in 56 premises being visited, 59 presumed trafficked adults found, of whom 15 adult women were subsequently confirmed as having been trafficked in Scotland.³⁰² In October 2007, Lord Advocate Elish Angiolini, at the first meeting of the Serious Organised Crime Taskforce of Scotland, said that “*Tackling serious and organised crime is a clear priority for the Crown Office and Procurator Fiscal Service*”.³⁰³ However, there has not been a single successful prosecution for human trafficking in Scotland despite 35 individuals being arrested during Operation Pentameter II.³⁰⁴ Of the 35 who were arrested, 18 were convicted, but for offences related to immigration or prostitution.³⁰⁵

In Scotland, victim support is a devolved matter under a local budget and in cases of adults who have been trafficked is provided by two agencies: The Trafficking Awareness Raising Alliance (The TARA project), set up in Glasgow in 2005 and funded by Glasgow City Council and the Scottish Government, and Migrant Helpline, which has been working in Scotland since 1 April 2009 and is funded by the Scottish Government. The TARA project follows a multi-agency approach and provides services to adult women who have been trafficked into commercial sexual exploitation in Scotland. Migrant Helpline provides support to adult men trafficked for sexual exploitation and anyone trafficked for forced labour and domestic servitude.

Following the implementation of the Convention, the Scottish Government established the Scottish Government's Human Trafficking Stakeholder Group for two purposes: to focus on the practical issues of the NRM at the local level and to develop a national protocol for the promotion of the safety, human rights and best interests of victims in Scotland.³⁰⁶ However, as a submission to the UK Parliament's Home Affairs Committee on Human Trafficking indicated (prepared on 14 May 2009 by Glasgow Community and Safety Services – the TARA project), it was felt that the expertise of the Stakeholder Group had not been taken into account by those developing policy in Westminster. Indeed, the Scottish stakeholders felt they had been “particularly marginalised in discussions concerning the NRM”.³⁰⁷ The TARA project made an explicit number of comments about how local structures and the specific challenges of addressing devolved responsibilities in Scotland had not been taken into account adequately in the development of the centralised NRM.³⁰⁸ For example, Scotland (along with Northern Ireland) was not part of the Impact Assessment conducted by the Home Office on the effect of the implementation of the Convention, even though it was announced as a UK-wide exercise.³⁰⁹ Scottish stakeholders were not notified well in advance of important meetings held in London, such as the one which took place on 27 February 2009 to discuss the NRM design prior to it coming into force.³¹⁰

No trafficked children were identified in Scotland during Operations Pentameter I and II. Research commissioned by the Child Protection Committee in Glasgow and published in February 2009³¹¹ retrospectively looked into the records kept by the social work asylum assessment team concerning 75 individual unaccompanied asylum-seeking children in Glasgow in 2007. Of these, 23 children were identified as having possibly been trafficked (ranked as cases marked by “concerns” or “high concerns”), either having been exploited on the way to the UK or being at continued risk of future exploitation, with a further nine cases indicating “suspicions” of trafficking.³¹² This is the only evidence prior to the coming into force of the Convention of the extent of child trafficking in Glasgow. The research, however, did not review cases concerning children other than those from outside the European Economic Area who were seeking asylum, such as A8 and A2 nationals.³¹³

³⁰² See openscotland.net/Topics/Justice/crimes/humantraffick accessed 30 April 2010.

³⁰³ Serious Organised Crime Taskforce, news release (22 October 2007), accessed at www.scotland.gov.uk/News/Releases/2007/10/22101509 on 30 April 2010

³⁰⁴ See openscotland.net/Topics/Justice/crimes/humantraffick accessed 30 April 2010.

³⁰⁵ See openscotland.net/Topics/Justice/crimes/humantraffick/enforcement1 accessed 30 April 2010.

³⁰⁶ ‘Trafficking in Human Beings: Protection and support to adult victims’, accessed at openscotland.net/Topics/Justice/crimes/humantraffick/victims on 30 April 2010.

³⁰⁷ ‘Memorandum submitted by the Glasgow Community and Safety Services’ to the Home Affairs Committee, prepared 14 May 2009, in Annex B (Written evidence), *The Trade in Human Beings: Human Trafficking in the UK*, accessed on 30 April 2010 at www.publications.parliament.uk/pa/cm200809/cmselect/cmhaff/23/23we55.htm

³⁰⁸ *Ibid.*

³⁰⁹ *Ibid.*

³¹⁰ *Ibid.*

³¹¹ Rigby P., Child Trafficking in Glasgow. Report of a Social Work Case File Analysis of Unaccompanied Asylum Seeking Children, Child Protection Committee Glasgow, 2009, accessed on 4 May 2010 at www.glasgowchildprotection.org.uk/NR/rdonlyres/F4470FF7-1586-4ADB-8217-003A0E45EA07A/0/GCPC_child_traffic_2009.pdf

³¹² *Ibid.*, pages 15-17.

³¹³ *Ibid.*, pages 7-8.

In Scotland, local authorities have a duty under the *Children (Scotland) Act 1995* to safeguard and promote the welfare of children in their area who are in need, regardless of their immigration status or nationality.³¹⁴ There are 30 local Child Protection Committees composed of representatives of the local police, health services, local authorities, children's services and relevant voluntary sector who have the responsibility of child protection in their specific areas,³¹⁵ including possible cases of trafficking. In February 2009, the Scottish Government published *Safeguarding Children in Scotland who may have been Trafficked*, guidance adapted to the Scottish context and derived from its equivalent produced by the Home Office and the Department for Children, Schools and Families for England. The guidance recommends Child Protection Committees in Scotland to develop inter-agency protocols to ensure the safety and welfare of potential child victims of trafficking (i.e. presumed trafficked children).³¹⁶ The Scottish Government is also in the process of reviewing the national guidance on 'Vulnerable Children & Young People' following the acceptance of the recommendations from the National Multi-agency Working Group on Young Runaways.³¹⁷

Following the implementation of the Convention, the Children, Young People and Social Care Directorate sent a letter on 31 March 2009 to all Chairs and Lead Officers of the Child Protection Committees to inform them of the NRM as well as of the assessment framework for children and to encourage them to let their staff know of a series of events organised by the Scottish Government in May 2009 to raise awareness on the new procedures.

What happens in practice

The Monitoring Group visited Scotland in November 2009 and conducted a focus group and a total of ten individual face-to-face interviews with statutory and non-statutory agencies in Glasgow: five interviews were conducted with statutory agencies, one with law enforcement, one with a legal representative and three with NGOs.

As with Wales and Northern Ireland, it was challenging to gather specific information on the numbers of people referred and identified through the NRM in Scotland as the UKHTC did not publish figures by jurisdiction and the Scottish Government did not make public such numbers either. The Monitoring Group submitted several *Freedom of Information* requests to the UKHTC but had received no answer by the end of April 2010. It is consequently not possible to report on the total number of people referred to the NRM in Scotland. However, as a result of a *Freedom of Information* request submitted by ECPAT UK,³¹⁸ it was evident that between 1 April 2009 and 15 January 2010, Glasgow City Council and Moray Council made referrals of children who may have been trafficked into their respective areas during this period, but it was not clear how many children were involved, the type of exploitation they were trafficked for or the decisions made in each case by the Competent Authorities.

The TARA project informed the Monitoring Group that from 2005 until early November 2009, they had dealt with a total of 103 referrals, 44 during 2009,³¹⁹ with Nigeria (12) and China (9) being the most frequent nationalities of the women who were referred. The TARA project also provided the Monitoring Group with anonymised information about 18 cases, 14 of which had been referred to the NRM. Of these 14 cases, two had received a negative 'reasonable grounds' decision and 12 were issued with positive 'reasonable grounds' decisions. Of these 12 cases, by January 2010, three had been issued with positive conclusive decisions and five were given negative conclusive decisions. Four of these negative conclusive decisions were served at the same time as negative asylum decisions, with the Competent Authority decision-maker commenting on the lack of credibility of the victims' accounts. The TARA project reported that this impacted very negatively on the women concerned and that two of the women had to receive additional out-of-hours support from TARA staff as a result.³²⁰

³¹⁴ See openscotland.net/Topics/Justice/crimes/humantraffick/childtrafficking accessed 3 May 2010.

³¹⁵ See www.scotland.gov.uk/Topics/People/Young-People/children-families/17834/10238 accessed 3 May 2010.

³¹⁶ See www.scotland.gov.uk/Publications/2008/04/08133832/0 Scottish Government, *Safeguarding Children in Scotland who may have been Trafficked: Scottish Government Response to the Consultation Analysis*, February 2009, page 15.

³¹⁷ See www.scotland.gov.uk/Publications/2008/04/08133832/0 Scottish Government, *Safeguarding Children in Scotland who may have been Trafficked: Scottish Government Response to the Consultation Analysis*, February 2009, page 44.

³¹⁸ *Freedom of Information* request 20100030 by ECPAT UK, inquiring how many children had been referred to the National Referral Mechanism by First Responder and asking to list the local authorities acting as First Responders, answered 11 February 2010.

³¹⁹ The TARA project – Update for the CSE Working Group, 12 November 2009, page 1.

³²⁰ The TARA project – Update for the CSE Working Group, 12 November 2009, page 3.

A total of 10 participants from statutory and non-statutory agencies in Scotland attended the focus group organised by the Monitoring Group in November 2009 to discuss the implementation of the Convention and its impact in Scotland, especially in terms of victim care and support. The key Scottish-specific issues discussed included:

- The ratification of the Convention and the coming into force of the NRM had contributed to raising awareness on trafficking in Scotland. However, identification was still retrospective as the issue of human trafficking was only just receiving attention in Scotland.
- Identification outside of Glasgow is challenging, especially in rural areas as there were no other agencies with similar expertise to the TARA project on the ground. Identification of trafficked persons who had been exploited for forced labour and domestic servitude needed more attention.
- Although TARA is a Scotland-wide service, it could take some time for TARA staff to travel to wherever a presumed trafficked person has been identified to conduct an assessment. The TARA project had sometimes been asked to complete an NRM referral form over the phone (which they refused to do without meeting the individual face-to-face and conducting a thorough assessment).
- Participants felt that in Scotland there was commitment from senior police officers to work on human trafficking, but they could not tell how well informed frontline police officers were across the country, especially at identifying possible trafficked persons. They believed that police forces outside of the Glasgow area had not received the same amount of information as those in the city. Participants highlighted that Strathclyde Police and Dumfries and Galloway Constabulary had made good progress on addressing trafficking. However, there were still issues with the time police officers have in general to either charge somebody with an offence or identify them as potential victims of crime, especially when considering the challenges of persuading presumed trafficked persons to disclose information about their experience while in police stations.
- Participants reported delays of months in the issuing of conclusive decisions by the regional UKBA Competent Authority, apparently due to the lack of capacity by appointed decision-makers to deal with the extra task of dealing with NRM referrals on top of their usual duties. In November 2009, UKBA Competent Authorities were allowed two weeks each to clear pending decisions. However, participants were concerned that the expertise of First Responders was not sought and, when provided, it was not taken into account by the Competent Authority decision-makers. Participants also reported that UKBA staff specialising in human trafficking cases were, in general, poorly informed about human trafficking and the impact of sexual abuse and exploitation, and were therefore unable to fulfil their role as First Responders within the NRM.
- Participants also expressed concern that there was insufficient provision of support services for trafficked persons in Scotland, such as interpreting and counselling. In Glasgow, for example, the COMPASS Asylum Seekers and Refugee Mental Health Liaison Team had expertise in working with trafficked persons but their service was oversubscribed and there were very long waiting lists.

The Glasgow Child Protection Committee published their *Inter-Agency Guidance for Child Trafficking* in September 2009 with instructions about the NRM and its forms. The Glasgow Child Protection Committee prepared this protocol to provide information and guidance to all those working with children in Glasgow, including police, schools and health professionals, so that they would be able to identify trafficked children and to provide them with the necessary protection and support.³²¹ Glasgow is also part of the pilot project assessing the Toolkit developed to assist professionals in the process of victim identification. Within Scotland, therefore, Glasgow is considered by relevant child protection professionals to be an example of good practice. It was Glasgow who reported to the Monitoring Group the case of a 15-year-old girl who had been referred to the NRM. She was given the 45-day reflection period, but the decision to grant this had taken several months. The UKBA Competent Authority decided that, to be able to make a decision, the UKBA needed the child's age to be formally assessed, as the definition of trafficking in the case of children is different. An age assessment (to certify that the child was indeed a child) had to be conducted before the UKBA would issue a decision.³²²

The Monitoring Group research revealed that accommodation provided to children of 16 and 17 years of age was still of concern in Glasgow, as had been reported earlier.³²³

³²¹ Glasgow Child Protection Committee, *Inter-Agency Guidance for Child Trafficking. (National Referral Mechanism form and risk assessment framework)*, September 2009, accessed on 4 May 2010 at www.glasgowchildprotection.org.uk/NR/rdonlyres/AADF622-A183-4B96-9D5E-D6F3C2C37A79/0/GLASGOWCHILDTRAFFICKINGGUIDANCESept09.pdf

³²² Interview 59 on 19 November 2009 with statutory agency.

³²³ Rigby P., *Child Trafficking in Glasgow. Report of a Social Work Case File Analysis of Unaccompanied Asylum Seeking Children*, Child Protection Committee Glasgow, 2009, page 17.

Scotland is leading in the UK by piloting a model of guardianship for unaccompanied children (as recommended by Article 10.4 of the Convention). The Aberlour Childcare Trust and the Scottish Refugee Council are due to start a 30-month pilot project in 2010 to deliver a system of guardianship for separated children, funded by the Scottish Government and the Big Lottery Fund.³²⁴ The project is intended to develop an inter-agency child-centred model of guardianship that can inform future provision both within and outside Scotland.³²⁵

The Equality and Human Rights Commission Scotland launched in February 2010 an in-depth inquiry into human trafficking in Scotland, due to be completed by the summer of 2011, but again it will focus mainly, although not exclusively, on commercial sexual exploitation.³²⁶ The Monitoring Group hopes that the creation of a new Scottish Co-ordination and Intelligence Unit within the Scottish Crime and Drug Enforcement Agency to tackle complex fraud and human trafficking (introduced as part of a new strategy for tackling serious organised crime in Scotland³²⁷ that was published in June 2009) will improve the knowledge-base of other forms of human trafficking in Scotland too.

The Monitoring Group received information about Operation Mockday, a large scale operation run in September 2009 and led by the HM Revenue & Customs in Scotland, which targeted human trafficking for other forms of exploitation. The operation is believed to have disrupted serious crime,³²⁸ but of the 22 individuals who were identified as presumed trafficked persons, only two were referred to the NRM.³²⁹

Although the Crown Office and Procurator Fiscal Service in Scotland have recognised the guidance produced by the Crown Prosecution Service for England and Wales on the non-criminalisation of trafficked persons,³³⁰ the Office is still to produce the Scottish equivalent. The Monitoring Group gathered case information which proved that trafficked persons in Scotland are still being arrested and convicted for offences that they have committed while in a trafficking situation, the most common offences being for possession of illegal documentation and for cannabis cultivation. In one particular case, a young female was convicted for cannabis cultivation despite disclosing details of her trafficking to her solicitor, who advised her to plead guilty to the charges against her, despite an expert report presented during court proceedings about her trafficking experience.

Recommendations to the Government of Scotland

- 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;
- 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;
- Establish a localised multi-agency Scottish National Referral Mechanism and a local infrastructure of support in accordance with the obligations of the Convention;
- 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;
- 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

³²⁴ See www.theworkcontinues.org/news.asp?id=1385 accessed 8 March 2010.

³²⁵ See www.theworkcontinues.org/news.asp?id=1385 accessed 8 March 2010.

³²⁶ 'Formal Inquiry opened into Human Trafficking in Scotland', Equality and Human Rights Commission news release, 9 February 2010, accessed on 13 May 2010 at www.equalityhumanrights.com/media-centre/2010/february/formal-inquiry-opened-into-human-trafficking-in-scotland

³²⁷ See www.scotland.gov.uk/Resource/Doc/274127/0081989.pdf

³²⁸ See submission at scottish-parliament.org/s3/committees/equal/inquiries/migration/subs/MT06MigrantHelpline.pdf, April 2010, page 16.

³²⁹ This information was provided to the Monitoring Group by an NGO – service provider. No information on the outcome of the referral was provided, nor reasons as to why the rest of the individuals had not been referred.

³³⁰ Crown Prosecution Service, *Human Trafficking And Smuggling*, Guidance updated 05 November 2009, accessed on 12 May 2010 at www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/#a29

their trafficking, especially related to cannabis cultivation offences, immigration related and soliciting or procuring offences;

- Develop better accommodation provision to effectively support 16- and 17-year-old trafficked children;
- Ensure safe accommodation, support and service provision are available for trafficked persons in all parts of Scotland, both men and women;
- Ensure appropriate provision of certain services for trafficked persons across Scotland, such as interpreting and counselling services.

c) Wales

The prevention of trafficking and the prosecution of trafficking-related offences are not devolved matters in Wales. This means that policing and justice are not devolved and are the responsibility of the UK Government. The Welsh Assembly Government has responsibility over health, social care and Local Government and therefore has responsibility in the provision of victim support in Wales.³³¹ It can make decisions and develop and implement policies on this specific area and it sets the priorities and the overall level of funding for services in Wales. Although local authorities retain a significant degree of autonomy and flexibility, the Welsh Assembly Government has an indirect role in overseeing local authority provision.

In January 2010, Peter Hain MP, the Secretary of State for Wales, who was the head of the Wales Office within the United Kingdom cabinet, confirmed the commitment of both Governments to ensure tackling “the horrendous crime of human trafficking” in Wales.³³²

The Welsh Assembly Government, under its strategy for tackling domestic abuse (*Tackling Domestic Abuse: a Partnership Approach*), launched in 2005, pledged funding for a safe house for women leaving prostitution, including trafficked women in South Wales.³³³ This safe house never materialised. However, and as part of the UK Government increased financial commitment of £3.7 million for the expansion of the POPPY project, the Diogel (‘Safe’) project, set up by the Black Association of Women Step Out (BAWSO) in Cardiff, started in December 2009 to protect, assist and support trafficked women. The project offers supported accommodation and counselling, health care (including mental health) to five women at any one time. The criteria used are the same as those applied by the POPPY project; namely, the women have to be over the age of 18, have been trafficked into the UK for sexual exploitation and this exploitation should have taken place within three months prior to the referral to the project.³³⁴ The Diogel project is the first that supports trafficked persons in Wales. Up until December 2009, through Home Office funding, trafficked persons identified in Wales could access support and accommodation via the POPPY project if they had been exploited for sexual exploitation and via Migrant Helpline if they had been exploited for forced labour, though both organisations were based in South East England.

Carl Sargeant AM (Assembly Member), the Minister for Social Justice and Local Government, launched *The Right To Be Safe* in March 2010, a six-year strategy for tackling all forms of violence against women in Wales. The strategy is an integrated, cross-Government programme of action which crosses the boundaries of devolved and non-devolved responsibilities, intended to work closely with the Home Office and criminal justice agencies in Wales.³³⁵ To ensure its implementation, the Welsh Assembly Government published a three-year detailed action plan (*Implementation Plan 2010-13*).³³⁶ Among its main targets (intended outcomes), the Welsh Assembly Government made a commitment to establish a project in North Wales to support “women fleeing prostitution and trafficking” by 2010.³³⁷ This was expected to be along the same lines as the Diogel project in South Wales. It also made a commitment to develop a standard reporting protocol with the Association of Chief Police Officers (ACPO) Cymru and the Crown Prosecution Service, both under the responsibility of Westminster, to provide regular data for the whole of Wales, related to the crime of trafficking and to charges, prosecutions and convictions for trafficking in human

³³¹ Welsh Assembly Government, ‘*What is the Welsh Assembly Government responsible for?*’, accessed on 23 April 2010 at wales.gov.uk/about/organisationexplained/responsiblefor/?lang=en

³³² Peter Hain MP, Secretary of State for Wales, Written Answers to Questions, Hansard, 18 January 2010: Column 5W, accessed on 23 April 2010 at www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100118/text/100118w0002.htm

³³³ ‘*The Right to Be Safe*’ strategy, published March 2010, page 7. Received 21 April 2010.

³³⁴ Report sent by BAWSO to the ATMG on 23 April 2010.

³³⁵ *Ibid.*, page 1.

³³⁶ Welsh Assembly Government, *The Violence Against Women and Domestic Abuse Implementation Plan 2010-13*, 2010, accessed on 13 May 2010 at wales.gov.uk/docs/dsjlg/publications/commsafety/100325implamentfinalen.pdf

³³⁷ *Ibid.*, section 2 (Provide Support for Victims and Children), point 2.28, page 11.

beings.³³⁸ A further commitment is to review the Diogel project in 2011 in order to learn lessons and improve support for women and children leaving prostitution or trafficked for sexual exploitation.³³⁹

In March 2009 a report commissioned by the Office of the Children's Commissioner for Wales, *Bordering on Concern: Child Trafficking in Wales*, was published by ECPAT UK. This identified 32 cases of children which met criteria set for assessing them as having been trafficked into Wales. On the basis of recommendations in the report, the Welsh Assembly Government convened an All-Wales Child Trafficking Group (as the Assembly Government has devolved responsibility for safeguarding children, including trafficked children). The All-Wales Child Trafficking Group is working towards the development of an integrated approach to child trafficking across Wales, to raise the profile of the issue in Wales and to improve coordination and cooperation across all agencies with child protection and safeguarding responsibilities in Wales. By the end of April 2010, the Group had met three times and was developing an All-Wales Protocol on Safeguarding Trafficked Children. The Assembly Government also commissioned ECPAT UK to develop an on-line training resource on child trafficking specifically for a Welsh audience taking into consideration Welsh structures and legislation and including recent developments such as the introduction of the NRM.

There is also a cross-party Assembly group on the Trafficking of Women and Children chaired by Joyce Watson AM, which was set up in 2007 and has been gathering evidence about the incidence of trafficking in Wales. At the time of writing, the group had just published a report on trafficking in Wales.

What happens in practice

The Monitoring Group visited Wales in December 2009 and contacted Welsh agencies again in April 2010. During December 2009, the Group conducted a focus group and a total of eight individual face-to-face interviews with statutory and non-statutory agencies in Wales, all with different levels of knowledge and experience in supporting and assisting trafficked persons. It was, however, difficult to gather specific information on the numbers of people identified in Wales and referred to the NRM. BAWSO submitted a *Freedom of Information* request³⁴⁰ that was answered in February 2010. It stated that between 1 April 2010 and 31 December 2009, a total of 11 people were identified in Wales as presumed victims of trafficking and referred to the NRM. Of these, five were referred by the UKBA and six by Welsh local authorities. No information was available about whether these referrals were of adults or children, for what form of exploitation they had been trafficked or what were the decisions made by the Competent Authorities in each case. However, as a result of another *Freedom of Information* request submitted by ECPAT UK,³⁴¹ it was apparent that between 1 April 2009 and 15 January 2010, Cardiff Council, Conwy Social Services and Newport Local Authority had all made referrals of children who may have been trafficked into Wales during this period.

Since the start of the Diogel project in December 2009, the project has supported a total of nine women, two of whom were pregnant when referred. Four of these women subsequently left the accommodation and the remaining five were still awaiting a Competent Authority decision in April 2010. However, of the nine women, only one woman of West African origin was referred from Wales, the referral agency being MEWN Cymru (Minority Ethnic Women's Network Wales). Another woman was referred by the Immigration Advisory Service in Cardiff and was receiving support through the POPPY Project's outreach programme in April 2010.

A total of 20 participants from statutory and non-statutory agencies in Wales attended the focus group organised by the Monitoring Group to discuss the implementation of the Convention and its impact in Wales, especially in terms of victim care and support.

The key Welsh-specific issues discussed included:

- The implementation of the Convention had raised awareness on trafficking in Wales but it had not changed what was referred to as the "culture of disbelief" in *Bordering on Concern*, as practitioners

³³⁸ *Ibid.* page 15.

³³⁹ *Ibid.*

³⁴⁰ *Freedom of Information* request 20100037 by BAWSO, inquiring how many trafficked persons had been referred to the NRM from Wales, listed by First Responder, answered 22 February 2010.

³⁴¹ *Freedom of Information* request 20100030 by ECPAT UK, inquiring how many children had been referred to the NRM by First Responder and asking to list the local authorities acting as First Responders, answered 11 February 2010.

believe that trafficking does not take place in Wales, creating a climate which is believed to be advantageous to traffickers;

- Although the Welsh Assembly Government informed all relevant agencies about the introduction of the NRM, this information had not trickled down to the managerial and frontline practitioners level of key agencies. In the absence of formal training available about the NRM, there was widespread lack of understanding of its structure, purpose and process among practitioners in Wales;
- Participants also considered that the NRM needed to be amended to take into consideration the national structures, legislation and policies in Wales, allowing frontline Welsh NGOs, whose expertise was not being taken into account, to refer presumed trafficked persons directly to the NRM;
- Through their involvement in Operation Pentameters I and II, the police forces in Wales had developed and identified ways of working on trafficking of women for sexual exploitation. However, as the police force in Wales is regionally divided in four (Dyfed-Powys, Gwent, North Wales and South Wales), there are now four different ways of working on trafficking, with some forces' responses being quite sophisticated in their approach and some less so;
- There was a need to develop an all Wales interpreter infrastructure, adequately funded to prevent Welsh frontline practitioners relying on unchecked local individuals or the use of expensive telephone interpreting services, which at times had proved ineffective;
- There were concerns over the quality of legal advice in Wales. Participants reported that due to legal aid cuts, profit driven legal service organisations were pulling out of Wales. Participants informed that the Immigration Advisory Service has withdrawn from Wales completely and that there are no legal immigration services available in Swansea. This situation had created worrying trends: the quality and experience of the remaining immigration solicitors working with legal aid was varied and there were no child welfare solicitors left who were based in Wales;
- The Diogel project had just been opened in Cardiff at the time the focus group took place and therefore knowledge about its existence and how to make a referral to the project were still in their infancy.

Participants commented that the criteria for referring women into the Diogel project were too restrictive. During the first few weeks of the project opening in Cardiff, practitioners reported to the Monitoring Group that they could not make direct referrals and that they needed first to contact the POPPY project in London. However, the Diogel project has accepted direct referrals from statutory and non-statutory agencies in Wales, but by March 2010 it was apparent that the project was unable to meet the needs of all the trafficked persons who were being identified, as it did not offer support and accommodation to those trafficked for forced labour or domestic servitude. At the beginning of 2010, an A8 national was identified as a presumed trafficked person by a number of statutory and non-statutory agencies in South Wales. He had answered a job advertisement in his country of origin by an agency that paid for his travel to Wales. He was accommodated in a small room, shared with six others, for which he had to pay £37 a week. He distributed and collected bags for clothes collection, receiving 70p per bag. He could not earn enough to pay rent and subsistence. When he confronted his manager, he was subjected to a beating. Eventually he was able to escape and went straight to the local police. However, the police did not make a referral to the NRM. Despite the police conducting an investigation and the person collaborating fully with police inquiries, he was never formally identified as a trafficked person. Even though the local authorities have the power in Wales to assist A8 nationals, they have no duty to do so given that he had no right to entitlements to housing and benefits in the UK. As a European Economic Area national, he could not access any of the IOM's voluntary return programmes, funded by the Home Office, and was therefore unable to obtain any financial assistance to return to his country of origin as he wished to do once he had provided the police with information. His return home was eventually financed by a group of altruistic private individuals.

In April 2008, the Welsh Assembly Government issued the guidance *Safeguarding Children who may have been Trafficked*³⁴² for all Local Safeguarding Children Boards in Wales, similar to that issued in England by the DCSF. The guidance takes into account structural and devolved matters particular to Wales. *Bordering on Concern* reported that practitioners across Wales were not aware of this guidance. In order to address this, the Welsh Local Government Association led an audit conducted in late 2009. A total of 13 local authorities and 12 Local Safeguarding Children Boards responded to it. The audit confirmed that not all Local Safeguarding Children Boards had identified trafficking leads and that only Cardiff, Newport and Blaenau Gwent had developed child trafficking protocols. This confirmed the need

³⁴² Welsh Assembly Government, *Safeguarding Children who may have been Trafficked*, April 2008, accessed on 3 March 2009 at wales.gov.uk/topics/childrenyoungpeople/publications/trafficked/?lang=en

for the All-Wales Child Trafficking Group to take leadership and develop an all-Wales Protocol on Safeguarding Trafficked Children, to establish the responsibilities of trafficking leads across Wales and to provide them with support and advice.

When the supplementary child-trafficking 'Toolkit' designed by the London Safeguarding Children Board was developed in early 2009, no local authority in Wales was approached to become part of the pilot. It was only in late 2009 that Barnardo's Cymru pushed to get Newport City Council to become part of the pilot. In December 2009, practitioners reported to the Monitoring Group that the Toolkit was too Anglocentric and needed to be amended to make it relevant to Welsh frontline practitioners, as it included references to structures which existed in England, such as the Common Assessment Framework, that do not exist in Wales.³⁴³ The Monitoring Group also learnt that the Welsh Assembly Government was considering issuing guidance on children who go missing, on private fostering and was in the process of developing parallel guidance to *Safeguarding children and young people from sexual exploitation* published in England by the DCSF in June 2009.³⁴⁴

Despite Crown Prosecution Service guidelines and a letter sent by the Association of Chief Police Officers (ACPO) to all police forces in Wales on how to handle cases of children and young people recovered from cannabis farms, there is evidence that children are still being convicted for offences that they have committed in Wales while under the influence of traffickers. The Monitoring Group learnt about a number of cases in Wales where children from South-East Asia who had been positively identified as under 18 years of age by children's services had been advised by their criminal solicitors to plead guilty during court proceedings against them for cannabis cultivation and were serving sentences in Children's Security Units across the country, despite evidence that they had been trafficked and advocacy by a number of agencies on their behalf. In one specific case, a child had been referred to the NRM and had received a negative decision by the Competent Authority because the child had not specified he had been forced to work in the cannabis farm. Once again, this suggested that Competent Authority decision makers did not understand the definition of child trafficking adequately.

In a recent development, all police forces in Wales have identified a strategic lead for trafficking and have identified operational points of contact within the four Welsh forces. Heddlu Gwent police convened its first consultation meeting with partner agencies from the areas of health, education, social services, community safety partnerships, national charitable organisations and NGOs as well as representatives of the Welsh Assembly Government departments and non-devolved agencies such as the UKBA.³⁴⁵ The consultation group is expected to conduct a scoping exercise of service provision currently in place in the region for all trafficked persons (adults and children), and to develop an information sharing protocol on human trafficking. It is hoped that the other Welsh police forces will follow this example and replicate the consultation group in their respective areas.

Recommendations to the Welsh Assembly Government

- Tackle the 'culture of disbelief' that exists in Wales by improving awareness and understanding of trafficking for all forms of exploitation
- Develop efficient standard reporting data protocols with non-devolved agencies such as CPS and the Association of Chief Police Officers (ACPO) and periodically publish statistics indicating the numbers of presumed trafficked persons in Wales, disaggregated by the form of exploitation for which they were trafficked and by age and gender, as well as the number of traffickers charged, prosecuted and convicted for trafficking and related offences;
- Ensure secure accommodation, support and service provision are available for all presumed trafficked persons in Wales, both male and female;
- Raise awareness in Wales of the existence of the Diogel project and expand its services to include adult women trafficked into domestic servitude (and consider making its services available to women trafficked for other purposes, such as forced labour);
- Ensure the establishment of a project in North Wales for all trafficked persons by 2010;
- Ensure the development and adequate dissemination of the All-Wales Protocol on Safeguarding Trafficked Children;

³⁴³ Interview 77 on 8 December 2009 with an NGO – service provider.

³⁴⁴ *Ibid.*

³⁴⁵ Information was sent to the Anti-Trafficking Monitoring Group by those participating in the meeting in April 2010.

- Raise awareness of the online resources for practitioners developed by ECPAT UK and to review its impact one year on;
- Establish an All-Wales Human Trafficking Group to develop an integrated approach to ALL victims of trafficking in Wales, not only on children, but on both adults and children, and incorporating devolved and non-devolved agencies;
- Establish a Welsh National Referral Mechanism, so that referrals and decisions are made within Wales and trafficked persons are supported and cared for at the local level whenever that is in their best interests;
- Appoint trafficking leads wherever those have not yet been established, such as in all local authority teams, all Local Safeguarding Children Boards and Health Trusts in Wales and to support their role through the All-Wales Child Trafficking and Human Trafficking Groups and ensure their continuity.

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Glossary

Adolescent	A person between the ages of 10 and 19.
Best interests of the child	The <i>UN Convention on the Rights of the Child</i> (Article 3.1) requires that, “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, <i>the best interests of the child</i> shall be a primary consideration” (emphasis added).
Child	“For the purposes of the Council of Europe Convention, ‘child’ shall mean any person under eighteen years of age” (Article 4.d). The word ‘child’ is used throughout this report in accordance with this definition, which is consistent with the definition contained in Article 1 of the <i>UN Convention on the Rights of the Child</i> .
Child sexual exploitation	The guidance issued by the UK’s Department for Children, Schools and Families in 2009 (<i>Safeguarding Children and Young People from Sexual Exploitation</i>) defines child sexual exploitation as, “Sexual exploitation of children and young people under 18 involves exploitative situations, contexts and relationships where young people (or a third person or persons) receive ‘something’ (e.g. food, accommodation, drugs, alcohol, cigarettes, affection, gifts, money) as a result of them performing, and/or another or others performing on them, sexual activities”.
Child trafficking	See ‘trafficking in human beings’. For the purposes of the Convention, “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 Article 4 (which lists the means which may be used to recruit adults to be trafficked as “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”).
Commercial sex	Earning money from sexual activities (either sexual intercourse or other sexual activities).
[the] Convention	The Council of Europe Convention on Action against Trafficking in Human Beings, adopted in Warsaw on 16 May 2005 (sometimes referred to as ‘the Warsaw Convention’). Published in the Council of Europe Treaty Series (ETS) No. 197.
Debt bondage	“The status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined” (Article 1 (a) of the <i>UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery</i> , 1956), ratified by the UK on 30 April 1957.
Explanatory Report	Council of Europe Convention on Action against Trafficking in Human Beings Explanatory Report, Council of Europe Committee of Ministers document CM(2005)32 Addendum 2 final, 3 May 2005. Accessed on 4 January 2010 at hwcd.coe.int/View-Doc.jsp?id=828773&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75
First Responder	An organisation which is recognised as competent to refer presumed trafficked persons to one of the UK’s two Competent Authorities.
Forced labour	Article 2.1 of the ILO Convention on Forced Labour (Convention No. 29, 1930) defines the term “forced or compulsory labour” to “mean all work or service which is exacted

from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.

Human trafficking

See ‘trafficking in human beings’.

Ibid.

Short for ‘*ibidem*’, meaning ‘in the same place’. In a footnote reference this means the source is the same as in the footnote immediately preceding.

Members

Member organisations of the Anti-Trafficking Monitoring Group which are: Anti-Slavery International (host), Amnesty International UK, ECPAT UK, Helen Bamber Foundation, Immigration Law Practitioners' Association, Kalayaan, POPPY project (of Eaves Housing for Women), TARA (of Glasgow Community and Safety Services), UNICEF UK

Migrant worker

The report uses the definition of ‘migrant worker’ adopted in the UN *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (1990) as “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national”.

National Rapporteur

An independent individual or office established to gather information about patterns of human trafficking and the impact of anti-trafficking laws, policies and measures, to report publicly on its findings and to make recommendations to Parliament or to policy matters.

Palermo Protocol

See UN Trafficking Protocol.

Potential victims of trafficking

Term used in the UK to refer to individuals who it is reasonable to suspect have been trafficked. In this report the phrase ‘Presumed trafficked persons’ is used to refer to such people (see below).

Presumed trafficked person (or presumed victim)

Because victims of trafficking are often reluctant initially to identify themselves as such, the term “presumed trafficked persons” was proposed in the ODHIR/OSCE Handbook on National Referral Mechanisms to describe persons who are likely to be victims of trafficking and who should therefore come under the general scope of anti-trafficking programmes and services. In such cases, there is reasonable suspicion that the person might be, or might have been, a victim of trafficking. In the UK, official documents refer to such individuals as ‘potential victims of trafficking’.

Separated child

Separated children are those separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. These may therefore include children accompanied by other adult family members.

Servitude

Having to live and work on another person's property and perform certain services for them, whether paid or unpaid, together with being unable to alter one's condition. See Chapter 7.

Sexual exploitation

The terms “exploitation of the prostitution of others” and “other forms of sexual exploitation” are not defined in the Council of Europe Convention, “which is therefore without prejudice to how States Parties deal with prostitution in domestic law” (paragraph 88, *Explanatory Report*). Similarly, no definition of “sexual exploitation” was agreed while the UN Trafficking Protocol (2000) was being prepared. However, the UN Secretary-General has defined the term as, “Any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another” (see [UN] Secretary-General’s Bulletin, *Special measures for protection from sexual exploitation and sexual abuse*, section 1, ‘Definitions’, UN document ST/SGB/2003/13, 9 October 2003).

Special (child) protection measures	Measures to protect a child in the course of legal proceedings, including initial questioning and police investigation. The nature of these special measures is not spelled out in the Council of Europe Convention, but there are in addition to a variety of victim and witness protection measures described in Article 28 of the Convention. A variety of special measures to protect child victims and witnesses are proposed in UNICEF's Reference Guide (UNICEF [Central Europe and CIS], <i>Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe</i> , 2006, available at www.unicef.org/ceecis/UNICEF_Child_Trafficking_low.pdf).
Trafficked person	A person whose testimony or circumstances suggest that s/he was recruited, transported, transferred, harboured or received, for the purposes of exploitation.
Trafficker	A person who engages in trafficking in human beings (as defined by the Council of Europe Convention).
Trafficking in Human Beings (also referred to as 'Human trafficking' and 'Trafficking in persons')	Defined by Article 4.a of the Council of Europe Convention (quoted in Chapter 3 of the report). In effect, trafficking in human beings is defined as the recruitment, transport, transfer, accommodation or receipt of persons (adults or children or both); <ul style="list-style-type: none"> • in the case of adults, by means of 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; • in the case of children, it refers to the recruitment, transport, transfer, accommodation or receipt of children, whether or not any abusive means are used. In both cases (of adult and children), it is for the purpose of exploitation, which includes 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.
UN Trafficking Protocol	<i>UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children</i> , supplementing the UN Convention against <i>Transnational Organized Crime</i> (2000). This Protocol is sometimes referred to as the 'Palermo Protocol'.
Unaccompanied child	Unaccompanied children (also called unaccompanied minors) are children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.
UNICEF Guidelines	UNICEF's <i>Guidelines for the Protection of Child Victims of Trafficking</i> (2006). The text was accessed on 4 January 2010 at www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf
Victim	The Convention specifies that "'Victim' shall mean any natural person who is subject to trafficking in human beings as defined in this Article" (Article 4 of the Convention). The term thus refers to a victim of crime, who is also considered to be a victim of his or her trafficker(s). The Convention uses the term "victim of trafficking in human beings" (Article 10.2). The term "victim of trafficking" is used by some organisations to refer to anyone who has been trafficked. Other organisations assert that use of the term 'victim' hinders the recovery of people who have been trafficked and prefer to refer to them as 'trafficked persons'. Numerous organisations which assist women or girls who have been trafficked for commercial sexual exploitation prefer to refer to them as 'survivors'.
Young person	Refers to both children (under 18) and young adults who are already 18 and up to the age of 23.

The Anti Trafficking Monitoring Group

The Anti-Trafficking Monitoring Group was formed in May 2009 and works according to a human rights-based approach to protect the well-being and best interests of trafficked persons.

This report presents the results of research undertaken to monitor the first year of implementation across the United Kingdom of the Council of Europe's Convention on Action against Trafficking in Human Beings, from 1 April 2009 to 31 March 2010.

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The views expressed herein are those of the Anti-Trafficking Monitoring Group and in no way reflect the opinion of the funders.

The Anti-Trafficking Monitoring Group's Members are:

Anti-Slavery International (host)
Amnesty International UK
ECPAT UK
Helen Bamber Foundation
Immigration Law Practitioners' Association
Kalayaan
POPPY project (of Eaves)
TARA (of Glasgow Community and Safety Services)
UNICEF UK

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