

National Referral Mechanism review Written evidence from The Children's Society July 2014

Introduction

The Children's Society has a long history of intensive work supporting, advocating for and safeguarding children and young people who are victims of trafficking and exploitation. Our response is based on our experience of eight specialist projects across the country which work directly with approximately 1,500 migrant and refugee children including those who are victims of trafficking and exploitation such as sexual exploitation and domestic servitude. We also run 13 specialist projects working with children who run away or go missing and/or are at risk or victims of sexual exploitation. Alongside these services we advocate for and campaign on behalf of children and young people at a national and local level through our policy, research and campaigning work and by leading coalitions such as the Policy Forum for the National Working Group on Sexual Exploitation and the Refugee Children's Consortium, which we co-chair.

We welcome this review into the operation of the National Referral Mechanism (NRM). We have long argued that the NRM needs significant improvement in several areas if it is to function effectively as a victim identification and protection mechanism for child victims of trafficking.

Summary of recommendations

A. Identification

- There should be comprehensive training for First Responders for how to refer to the NRM, their responsibilities in relation to this, ensure sufficient evidence can be gathered to make a referral and that the form is filled out correctly to guarantee the child has a fair chance to be considered as a victim of trafficking.
- The time estimated to fill in an NRM form should be revised to reflect a more accurate assessment of the time taken and needed to make an accurate referral.
- Becoming involved in a criminal investigation should be the choice of the individual and in many cases this may not be appropriate for a child.

B. Access to and level of support

- Trafficked children should continue to be provided with support under The Children Act 1989. This should have no link with the NRM.
- NRM case owners should be trained on types of exploitation and trafficking including historic exploitation.

C. Data

- Any new data collection mechanism should make clear whether the data will be used for intelligence or data collection purposes or access to support and assistance as a victim.
- The NRM Review should explore how any new data collection system will run in parallel to local authority data collection of trafficked children and how this should be improved.

D. Decision making

- Introduce an appeal right so as a victim can challenge an unlawful decision both at the reasonable grounds and conclusive grounds stage of the NRM process.
- The Competent Authority decision maker should make a decision by reference to a 'reasonable degree of likelihood'.

E. Level of support

- The 45 day reflection period should be extended to three months to reflect international recommendations and the on-going multiple processes that victims of trafficking are involved in.
- A new NRM system should ensure all trafficked children have access to therapeutic and mental health support in collaboration with local authorities' statutory duties around this. However, access to these services should not depend on an NRM referral.
- The NRM review team must liaise with the DoH to ensure that potential victims of trafficking not referred to the NRM are protected. All children must be exempt from NHS charging if all victims of trafficking are to be entitled to NHS care.
- The current policy of granting temporary leave to trafficked children should be reformed. A durable solution should be found for these children, which takes into account the child's views, needs and concerns and is based on their best interests.

F. Governance

- The possibility of situating the NRM in a MASH should be explored to ensure that children receive a full multi-agency response.
- The NRM should only be placed on a statutory footing if the Home Office's role in the process is omitted and the data collection element is separated from the victim referral element.

A.) IDENTIFICATION

Is the identification and referral process for potential child victims effective, including the role of First Responders?

Adults' lack of awareness of trafficking

Our experience is that the current identification and referral process for child victims of trafficking into the NRM is not always effective. Although the situation has improved, too many trafficked children are still not being identified by some First Responders – primarily social services, police and immigration authorities. Our research has shown that trafficked children do not have a clear understanding of what is happening to them and disclosure about their experiences is a complex process¹. This means the emphasis has to be put upon adults having awareness of the indicators of trafficking to enable discovery and identification. Our review of support for trafficked children, written in partnership with the Refugee Council and funded by the Home Office, found that lack of awareness, understanding and training can lead to social workers and the police missing opportunities to identify trafficked children earlier and thereby not referring to the NRM².

From our experience some referrals by local authorities have been of very poor quality, showing limited understanding of trafficking indicators and of the implications of a negative NRM decision on the well-being, safety and best interests of that child. For example, one of our advocates experienced a newly qualified social worker with no

¹ Children's Society (2009) *Hidden Children – Separated Children at Risk*. The Children's Society, London

² Franklin, A. and Doyle, L. (2013) *Still at Risk: A review of support for trafficked children*. The Refugee Council and The Children's Society http://www.childrensociety.org.uk/sites/default/files/tcs/still_at_risk_-_full_report_-_refugee_council_the_childrens_society.pdf

knowledge or understanding of trafficking ignore advice that we suspected a child was a trafficking victim and to refer him to the NRM. As a result the child went missing.

Case study: Missing trafficked child

We came into contact with K through our trafficking project. The child was not registered at school or with a GP, and there were other minors living at the same address with unrelated adults. At first the local authority did not believe that the child had been trafficked and claimed that he was here with his family, however, these adults said they didn't know the child. There were indicators that the child had been a domestic servant. The child was subsequently moved on by his traffickers to a different location and went missing. The local authority was reluctant to liaise directly with the police and it took intensive advocacy and support from voluntary agencies until they even reported the case to the police. The police did not treat K as a trafficking case, but allocated him to the missing persons" team who went to visit his last residence where the traffickers told him they had never heard of the young person, so the police tried to close the case. The child eventually contacted our service and was placed in emergency foster care. Our service co-wrote an NRM referral with the local authority and the young person got a positive reasonable grounds decision.

Our practitioners frequently receive referrals for children who have been wrongly arrested and criminalised for exploitation (particularly in cannabis farms) when they are in fact victims of trafficking and have been forced to commit these crimes by their traffickers. Despite guidance on this, the police, CPS and solicitors and YOI staff are failing to recognise these children as victims of trafficking and refer these children to the NRM until our involvement. For seven of the children in our review, their first contact with public authorities was either with the police because brothels were raided, or with immigration officers at borders who became suspicious of their documentation when they were being moved out of the UK by their traffickers. In some of these cases, officials, police and solicitors did not recognise the two key factors in their situations – that they were children and that they were potential victims of trafficking – which resulted in them being caught up in the adult criminal justice or asylum system. This can in particular be a problem where the child's age is disputed because they are then treated as an adult for criminal justice purposes.

We are aware from our practitioners and evidence to the recent parliamentary inquiry into legislation tackling CSE and trafficking within the UK that not all police forces that use trafficking offences to prosecute perpetrators make referrals to the NRM.³ It is widely acknowledged that low levels of awareness of the NRM and a lack of understanding of the full definition of trafficking amongst professionals and how it applies to children of all nationalities means that children including British and settled children are frequently not referred to the NRM.

Recommendations

- There should be more training for social workers, police, immigration officials, staff in the youth offending and criminal justice system, and those working in the health and education sectors to raise awareness of trafficking indicators and what course of action to take if they suspect that a child they have contact with may have been trafficked.

³ Barnardo's (2014) *Report of the Parliamentary inquiry into the effectiveness of legislation for tackling child sexual exploitation and trafficking within the UK*, London http://www.barnardos.org.uk/cse_parliamentary_inquiry_report-2.pdf

- This should include training on the responsibilities set out in the new statutory guidance for safeguarding trafficked and unaccompanied children. This includes how to conduct a proper assessment of the child's needs and a multi-agency child protection investigation.

Poor quality referrals

As mentioned above, a lack of awareness and specialist skills amongst local authorities means that our specialist advocates working with trafficking victims often support social workers to fill out forms where their referrals are inaccurate or incomplete. This can have a serious impact on the child's claim where much of the decision relates to whether or not a victim is seen as credible.

Furthermore, practitioners have highlighted that the time estimated in the impact assessment to fill out an NRM form – 15 minutes – is unrealistic. From experience we believe that even with a straightforward case, it would take several hours to complete a detailed referral and often it can take much longer, especially with a complex case. These time constraints mean there is a reliance on our advocates to assist with evidence gathering and ensuring accuracy and understanding of trafficking indicators.

Our practitioners also report a failure from First Responders to communicate the decision made by the NRM to the child, our services or their legal representative. In some cases, this has led to the young person going missing because they are unaware they have been accepted as a victim of trafficking.

Recommendations:

- There should be comprehensive training for First Responders for how to refer to the NRM, their responsibilities in relation to this, ensure sufficient evidence can be gathered to make a referral and that the form is filled out correctly to ensure the child has a fair chance to be considered as a victim of trafficking.
- The time estimated to fill in an NRM form should be revised to reflect a more accurate assessment of the time taken and needed to make an accurate referral.

How can the NRM process encourage more victims to come forward, be identified and support criminal investigations?

Lack of clarity of benefits of NRM for children

In our view, the NRM needs to undergo substantial changes if it is to encourage more victims to come forward, be identified and support criminal investigations. Primarily, we find, and our practitioners report, that the NRM does not currently provide limited benefits for children from outside the UK. As these children are already in the looked after system, the NRM does not provide them with accommodation or support, access to therapeutic and health services, as it does for adults. There is also little incentive to refer into the NRM to access a residence permit as this initiates a legal procedure that the child often does not understand and can lead to their credibility being questioned and feeling disbelieved. The child is likely to have an on-going immigration or asylum claim and the NRM is an additional intrusive process with little gain that only serves to make the child feel more frightened and frequently disbelieved. Our practitioners report that when they inform the young people they are working with that they can be referred to the NRM and what it does, most are scared and fearful of being referred because of its link with the Home Office and are unclear what benefits it will bring to them.

However, our practitioners find that a positive NRM decision, can be a useful mechanism to help convince local authorities of a child's victim status and that they need to make proper safeguarding arrangements. They report that the NRM is particularly useful for British victims who have been trafficked within the UK for CSE. This is because these children would not necessarily be in the looked after system. In addition, many of these children are going through a highly traumatic adversarial prosecution process and being recognised as a victim of trafficking by the NRM can add weight to the prosecution and take pressure of the victim or witness. Arguments about consent are often used to challenge the credibility of the victim in court so official recognition as a victim can counteract this.

Negative experiences of interaction with the police

Where young victims of trafficking have had interaction with the police to support a criminal investigation, they report that the experience is frequently a negative one. One young person in our services, for example, was asked by the police to visit the area where he had been with his trafficker but the police officer said they had an emergency, failed to turn up to meet the young person and left him waiting alone at a train station for two hours. Similarly, when young people are interviewed about their experiences, our advocates find they are unable to go into the interview with the young person, leaving them alone, scared and confused.

A strong and comprehensive support system for victims before, during and after they disclose trafficking is likely to improve a victim's confidence and make them more likely to want to come forward to contribute to criminal investigations. This should include suitable and safe accommodation and access to health services, as well as a resolution to their immigration status. Many of these young people are from countries where they fear the police and they also have reservations about this interaction, especially where their immigration status is unresolved and where they are slipping through the gaps in support or where their quality of support is poor. Despite this situation, our advocates report that it is usually assumed by police that if a young person enters the NRM process they will be expected to speak to and cooperate with the police. Unfortunately our advocates report that the support the young people receive from the Competent Authority, the decision from the NRM and their grant of leave can appear to have a link to their willingness to co-operate with police and criminal justice procedures and press charges.

Our experience in working with victims of sexual exploitation also finds the treatment of their case by the police and prosecutors to be dependent on their co-operation and willingness to press charges. Our practitioners report that law enforcement responses to child sexual exploitation are primarily reactive, rather than pro-active. A more pro-active response to evidence gathering would also help take the focus off the young person who has been through an extremely traumatic situation. One of our services reports collecting large amounts of intelligence on young people they believe are at risk of CSE and the police have refused to act. Another reports that the police log the case on their system but will not act or initiate surveillance unless there is a proof of rape or sexual assault.

Misunderstandings about the nature of trafficking

Our projects also believe that the police tend to focus their efforts on criminal trafficking gangs and networks rather than understanding that trafficking can also happen on a much smaller scale, such as within families or private fostering arrangements. For example, our advocates worked with a young person who was trafficked from Nigeria.

He received a positive grounds decision. However, as soon as it became clear to the police that he had been trafficked by an aunt and not a larger network the police closed his case. This meant there was a lack of police evidence and his conclusive grounds decision came back negative.

Our practitioners working with victims of child sexual exploitation and trafficking report the same focus on organised networks, in particular sexual exploitation perpetrated by male groups or gangs against young girls. This is partly due to the increased media focus on this type of exploitation but can lead to the police failing to investigate when the exploitation is not in this form. This includes a lack of understanding that both victims and perpetrators may not fit any particular model and can be of any gender, ethnicity and age.

There is also a misunderstanding about the nature of trafficking within the UK and what it involves. The majority of our services have no cases where trafficking was used to prosecute in their local area, despite there being several large scale CSE police operations. For example, our CheckPoint project in Torbay was involved in Operation Mansfield and although our practitioners believe trafficking within the UK took place, the police and CPS were unable to prove it and could not charge the men with trafficking. In another example, trafficking charges were not used, despite the evidence of movement, as the police and CPS believed that young people have not been moved far enough. There is a perception that trafficking only takes place across country or county borders. However, our practitioners find that trafficking may occur as part of the grooming process within a very short distance, e.g. from street to street or even house to house.

Where trafficking offences are prosecuted for in relation to trafficking within the UK for CSE, they are a very beneficial piece of legislation. This is because they have a high likelihood of conviction and are often the only charge for which the CPS can bring a strong case for and ensure a long sentence. Practitioners also report that trafficking is easier to trace and prove than other offences and do not involve the victims disclosing that have been abused in the same way as with such offences as rape. This is because trafficking of a child is always an offence because a child cannot consent.

Criminalisation of victims of trafficking

As mentioned above, our practitioners frequently come into contact with children who have been wrongly criminalised. These children are frequently advised by duty solicitors to plead guilty to trafficking offences they have committed as part of our trafficking until our advocates intervene and secure them another solicitor who can take up their case as a victim of trafficking. Our research interviewed some young victims who were criminalised for offences they were forced to commit by their traffickers, such as documentation offences or cannabis cultivation⁴. They were imprisoned or held in immigration detention but were released after coming to the attention of voluntary sector organisations or immigration solicitors. Despite their release, and the quashing of their convictions, our advocates report that victims are sometimes still viewed as a criminal during investigations to find their traffickers. For example, in one case the relationship between the police officer investigating the trafficking and the victim broke down because the victim felt his previous false criminalisation was affecting the officer's judgement.

⁴ Franklin, A. and Doyle, L. (2013) *Still at Risk: A review of support for trafficked children*. The Refugee Council and The Children's Society http://www.childrensociety.org.uk/sites/default/files/tcs/still_at_risk_-_full_report_-_refugee_council_the_childrens_society.pdf

Recommendations:

- Becoming involved in a criminal investigation should be the choice of the individual and in many cases this may not be appropriate for a child. It cannot be assumed that this should be the eventual outcome of a child victim coming to the attention of the authorities, especially when current experiences for children of police investigations are that too often they are being undertaken half-heartedly and are a distressing process.
- This Review should work with ACPO, the NCA and the CPS to initiate a programme of work to ensure that the police and prosecutors are aware of and able to make use of legislation relating to trafficking within the UK and have a good knowledge that the definition of trafficking is focussed on movement and not on the distance travelled.
- See recommendations on training in section above.

B.) ACCESS TO AND LEVEL OF SUPPORT

Who should be entitled to access victim support through the NRM?

We believe that support for trafficked children should continue to be provided under The Children Act 1989 and have no link with the NRM. Where a local authority suspects that a child may have been trafficked or have had a child referred to them on that basis, they should be providing services as if trafficked status had been established. We would argue that the risk of waiting to provide protective services at a later stage are too great because children may therefore not get the services they require and could be exposed to further exploitation and re-trafficking.

Are the current thresholds for assessing an individual as a victim appropriate – or are they too restrictive/ open to abuse?

We believe it is right to operate a low standard of proof for the reasonable grounds decision so as not to risk potential victims being prevented from accessing services and exposing them to further risk. In the case of possible child victims this might mean the provision of specialist safe accommodation where the carer is attuned to the potential for the child to return to the trafficker, more intensive support from social care staff and the provision of a lawyer even where the child has not been considered to be claiming asylum.

Our practitioners also report that some children they have worked with are denied protection on the basis that their exploitation is historic. As mentioned above, cases and decisions are too often made on the basis of what a 'typical' victim of trafficking looks like. They also report that there is too little understanding of what trafficking and exploitation entails and that a child cannot consent to exploitation, as this quote from a practitioner interviewed for our Still at Risk research illustrates:

"I use the NRM... To be honest I don't find the National Referral Mechanism process particularly helpful right now just because a lot of the NRMs I am completing are coming back as negative results, because they are saying that the exploitation element can't be proved."

Recommendations:

- Trafficked children should continue to be provided with support under The Children Act 1989. This should have no link with the NRM.
- NRM case owners should be trained on types of exploitation and trafficking including historic exploitation.

C.) DATA

Is there effective victim data collection and data sharing between relevant partners?

The main problems that we have highlighted in relation to the NRM in this submission are precisely why it does not work effectively as a data collection system. The NRM is essentially a victim support system and cannot be relied upon as a data collection or intelligence collection system or to commission services. While the functions of the NRM remain interlinked with Home Office priorities around immigration control and reducing net migration, it seems unlikely that this system will be able to accurately reflect the true scale of human trafficking in the UK. In 2013, we submitted evidence to the inquiry into data on human trafficking and modern slavery in the UK⁵. The current system of data collection – nationally and locally – is insufficient and results in a failure to both adequately protect children and devise effective policy solutions. At the moment, data on trafficked children is held by numerous agencies with no effective oversight, some agencies collect very limited information or no data.

Local and national government do not have a clear understanding of the full picture of how many or which trafficked children are in local authority care, how many go missing and how many are later located, and therefore cannot put effective measures in place to protect these children. For example, each year local authorities are required to fill out a form (SSDA903) with details of every child in their care and submit this to the Department for Education (DfE). However, this does not include data on trafficked children, children's nationality or immigration status or whether they run away from care, meaning the annual government statistics lack basic information on trafficked children⁶.

The voluntary referral by the agencies designated as First Responders is one reason why data from the NRM is inaccurate as well as lack of awareness of the NRM as mentioned in Section A. However Clause 44 of the Modern Slavery Bill places a new duty on 'specified public authorities' to notify the National Crime Agency (which incorporates the UKHTC) if it has reason to believe that a person may be a victim of slavery or human trafficking. This is intended to help improve data collection. Which public authorities will be 'specified', and thus have the duty to report, will be laid down in regulations. In the case of a suspected child victim, the duty to notify the NCA will require the specified authority to provide information identifying the child without their consent. If the Home Office and associated bodies such as the Border Force and Criminal Casework Directorate are to be included in this list of public authorities, any data collection should be kept separate from victim identification and the child's consent should be obtained. The reasons for our concerns about the Home Office's role in victim identification are explained in the rest of this submission.

Recommendations:

- We are very concerned about the sharing of children's data without their consent and urge that any new system of data collection should be kept separate from victim identification.

⁵http://www.childrenssociety.org.uk/sites/default/files/tcs/thechildrenssocietyresponse_appginquirydatatrafficking_final.pdf

⁶ APPG inquiry into children who go missing or runaway (2012) <http://www.childrenssociety.org.uk/what-we-do/policy-and-lobbying/parliamentary-work/appg-inquiry-children-who-go-missing-or-run-away-c>

- Any new data collection mechanism should make clear whether the data will be used for intelligence or data collection purposes or access to support and assistance as a victim.
- The NRM Review should explore how any new data collection system will run in parallel to local authority data collection of trafficked children and how this should be improved.

D.) Decision making

Is the current decision-making process, including quality and consistency of decision making, effective and timely?

As mentioned above, we have serious concerns about the efficacy, quality and timeliness of the decision making of the NRM for trafficked children. Our research about the care arrangements of trafficked children highlighted⁷ that negative results can occur despite knowing that a young person has come in to the UK through an 'agent' or 'trafficker'. The NRM's decision-making has been widely criticised with concerns that cases have been turned down inappropriately (i.e. people who have, in their opinion, been trafficked have not been identified as such)⁸ and that there is variation in how the definition of 'victim of trafficking' is interpreted by case-owners⁹. Currently there is no mechanism for appeal of a negative decision in the NRM. The only mechanism is judicial review which is a costly and time-consuming process. Given concerns about decision making processes, decisions must be open to some form of review and the right to challenge these decisions is very important. We question whether the absence of a formal appeal or review procedure is 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).

The government is currently attempting to introduce a 'residence test' to further restrict access to legal aid based on an individual's immigration status. The test has been ruled unlawful but the government is appealing this decision¹⁰. Under this test, only NRM-recognised victims of trafficking or those with an asylum claim would be able to get legal aid and then only in very limited circumstances. Crucially, a child would not be able to challenge a negative NRM decision by the Home Office which is currently only possible through judicial review. A right of appeal in this instance therefore becomes even more necessary.

Recommendation:

- Introduce an appeal right so as a victim can challenge an unlawful decision both at the reasonable grounds and conclusive grounds stage of the NRM process. This would help to improve the lack of transparency currently experienced in the NRM as well address the evidence of poor decision-making.

⁷ Franklin, A. and Doyle, L. (2013) *Still at Risk: A review of support for trafficked children*. The Refugee Council and The Children's Society http://www.childrenssociety.org.uk/sites/default/files/tcs/still_at_risk_-_full_report_-_refugee_council_the_childrens_society.pdf

⁸ *Wrong kind of victim? One year on: an analysis of UK measures to protect trafficked persons* (2010) The Anti-trafficking Monitoring Group http://www.antislavery.org/includes/documents/cm_docs/2010/a/1_atmg_report_for_web.pdf

⁹ ECPAT UK and Children's Rights Alliance for England (2013) *Alternative Report on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* http://www.ecpat.org.uk/sites/default/files/final_opsc_submission_pdf.pdf

¹⁰ <http://www.bindmans.com/news-and-events/news-article/unauthorised-discriminatory-and-impossible-to-justify-the-divisional-court-gives-judgment-on-the-lord-chancellors-civil-legal-aid-residence-test>

Is there a relationship between an individual's claim for asylum and their trafficking claim? If yes, what impact, if any, does this have on the outcome of the trafficking decision?

The relationship between the asylum and trafficking claim

Our practitioners report that although there should not be a link between an individual's claim for asylum and their trafficking claim, this is all too often the case. Our advocates find there is a lack of independence and transparency in decisions made by the Home Office as case workers have a dual role in assessing whether a child is a victim of trafficking while at the same time determining their immigration claim. This leads to a clear conflict of interest. Our advocates find that the statement of evidence form in a child's screening and substantive asylum interview is being used to question the credibility of a child's trafficking claim. Small inconsistencies in the victim's account are used to question the credibility of the whole account. Sometimes the link is very explicit with obvious parts copied from one decision to another. They also report selective use of evidence with no reasoning, for example when these interviews expose something which reinforces the child's asylum claim or vice versa, the Home Office are reluctant to use this information to strengthen the child's case.

As mentioned above, Home Office case workers sometimes misunderstand the definition of trafficking, as well as the effects of trafficking or exploitation on the victim. The level of trauma suffered by trafficked children means it is highly likely they will not recall their trafficking in a logical way and there may be inconsistencies in their account. This may also be due to the fact that they may not recognise they are victim of trafficking. The NRM is a victim referral system and it should not operate on the basis that the child has to prove their credibility (see answer to next question on burden of proof).

NRM data shows that foreign national children are almost three times less likely to be accepted as victims of trafficking than British children when referred¹¹. Although the reasons behind this disparity are unclear, it suggests that immigration status and nationality may be significant factors in determining how some decisions are made, and further investigation is needed. This issue is particularly acute where children convicted of a criminal offence as a result of their trafficking such as cannabis cultivation and their case is managed by the Criminal Casework Directorate (CCD) This presents a particularly significant conflict of interest as the core work of CCD is deporting or removing foreign national criminals.

A negative decision can compound the impact of trauma and abuse that the child has suffered at the hands of traffickers whilst also affecting their credibility within both their asylum and trafficking claim. As a result, our practitioners sometimes feel that referring a child to the NRM may not be in the child's best interests because of the additional trauma and distress to the child if they are refused.

Quality

Our practitioners tell us that the Competent Authority never pro-actively collects evidence when they have been referred a case from the First Responder despite guidance that requires them to do this. Our advocates therefore find the responsibility to do this falls on them but they will have less access to information. This reliance on written information from First Responders and because there is no personal interview with the alleged victim means there is often a lack of sufficient and quality evidence

¹¹ UKHTC (2011) National Referral Mechanism Statistical Data April 2009 –June 2011

being used to make decisions. If this information is not accurate this has an extremely detrimental impact on these children who are at risk of their claim being wrongly refused. This information must also be accurate if it is being used to inform a child's asylum case.

Timeliness

Furthermore, this period of waiting for decisions, leaves huge uncertainty for the victim's immigration status. This will become even more relevant with the implementation of provisions in the Immigration Act 2014 and uncertainty and confusion this is likely to cause when attempting to access services such as healthcare and bank accounts. It is also unclear whether an asylum claim alongside the NRM referral is slowing down the process of decision-making. Our advocates experience quicker decisions for EU nationals than decisions for non-EU.

Recommendations:

(See Section F for recommendations from this section)

Should the Competent Authority decision maker make a decision by reference to a 'reasonable degree of likelihood' test instead of a 'balance of probabilities' test?

We recommend that the test be changed to a 'reasonable degree of likelihood'. Victims of trafficking should not have to jump hurdles to get the protection they need, this is not needed for any other crime. As mentioned in Section D, child victims of trafficking may have difficulty remembering specific details given their exploitation and the trauma they have experienced in the same way as those seeking refugee protection as victims of persecution. The lack of pro-active evidence gathering by the Home Office and the difficulty for victims in obtaining corroborative evidence also means a lower standard of proof is needed. The majority of the young people we work with have both an asylum and trafficking claim. The standard of proof in asylum cases is also below the civil standard and expressed as 'a reasonable degree of likelihood' or 'a real risk' to account for the reasons above. However while the standard in asylum cases applies to the risk of persecution on return, the standard in trafficking cases relates to a retrospective matter of fact – whether the person does or does not meet the definition of trafficking contained in the Council of Europe Convention on Action against Trafficking in Human beings (the Convention) – essentially whether they have been coerced or deceived into a situation where they are exploited. This can make the claim more difficult to prove.

Recommendation:

- The Competent Authority decision maker should make a decision by reference to a 'reasonable degree of likelihood'.

E.) LEVEL OF SUPPORT

What support should victims receive, once they are referred into the NRM (is the 45-day reflection and recovery period appropriate)?

Our advocates also find that the 45-day reflection period is never respected and that decisions are almost always taking much longer than this. We believe this period should be adhered to or changed to reflect the complexity and time needed for making decisions in these cases. We believe that the 45 day reflection period is not usually sufficient for the victim to receive appropriate support and/or complete the process of

referral and assessment to further specialist services. A longer period of recovery may lead to an increase in the number of victims willing to co-operate with criminal investigations and/or give evidence that is of value to such work and potential prosecutions.

Those working with victims have long argued for reflection periods of sufficient length to be useful to the victim and the state. The UN Commission's Expert Group on Trafficking in Human Beings recently issued an opinion on a reflection period and residence permits for victims of trafficking in human beings which stated, *inter alia*, that the reflection period for victims should be no less than three months in length. Children will also be involved in several on-going processes at the same time as the reflection period and their trafficking claim is being considered which needs to be allocated for. These include asylum and immigration processes, investigations into support from local authorities and criminal investigations or prosecutions. The asylum process should be on hold during this time whilst the person seeks legal advice but our practitioners and the Immigration Law Practitioners Association (ILPA) report that this is frequently not the case. In our experience, most children who are accepted as victims of trafficking get this decision, but the asylum decision takes a lot longer. On top of this, in our experience most children will have their age disputed by local authority children's services often on the basis of false documents given to them by their traffickers. As a result they may be incorrectly detained or inappropriately placed in adult accommodation that does not keep them safe, let alone meet their needs. If they are not age disputed, there will still be on-going procedures beyond the 45 days such as settling in to a new placement and starting school or college that are vital for their recovery and rehabilitation.

Recommendation:

- The 45 day reflection period should be extended to three months to reflect international recommendations and the on-going multiple processes that victims of trafficking are involved in.

Poor quality of social services support and accommodation for trafficked children

As mentioned above, the NRM does not trigger the same support for unaccompanied looked after trafficked children as it does for adults. Furthermore, we find the quality of care and support for trafficked children in the care of local authorities is frequently inadequate. Our review into support for trafficked children¹² found children were sometimes critical of the care they received from local authorities. They often had multiple social workers or key workers, resulting in little continuity of care and children were found to frequently have to repeat their stories of the traumatic abuse and exploitation they had experienced. Children's criticisms of the care provided were centred around a lack of contact, not being listened to and social workers not taking action where necessary. Examples were cited of where action was only taken by social workers because voluntary sector organisations and welfare solicitors had become involved and advocated for the services and support required. However, local authorities reported that they sometimes experience barriers to providing an allocated permanent social worker, and stakeholders emphasised that whoever supports the child needs the skills to manage complex situations.

¹² Franklin, A. and Doyle, L. (2013) *Still at Risk: A review of support for trafficked children*. The Refugee Council and The Children's Society http://www.childrensociety.org.uk/sites/default/files/tcs/still_at_risk_-_full_report_-_refugee_council_the_childrens_society.pdf

Local authorities also reported that having insufficient accommodation presented a barrier to providing effective support. This can pose risks to trafficked children. Some children reported multiple moves and being placed in accommodation where they lived in fear. This was reiterated by an APPG inquiry into the safeguarding of children who run away or go missing from care¹³ in 2012 which we supported. Local authorities also identified that they faced some difficulties in providing appropriate education, mental health services and leisure opportunities for trafficked children. Stakeholders emphasised the importance of trafficked children participating in education and noted that some received incorrect advice about entitlements from social workers and/or solicitors.

Children need access to one continuous point of contact in the delivery of their care, a person who can coordinate the provision of safe accommodation as well as timely access to education and mental health services. This should be available to all children up to the age of 18 and transition into adulthood for older victims should be incorporated into their care arrangements in the form of good quality pathway planning. This is why we believe all trafficked and unaccompanied children should be allocated a legal guardian from the minute they enter the country.

A number of local authorities indicated in their responses to the survey that they had had some difficulties providing access to mental health services. The need for therapeutic and mental health support for trafficked children is well documented. They are likely to be suffering from high levels of depression, hostility, stress, anxiety, and fear of authority, as well as fear of their exploiters.¹⁴ A new NRM system should ensure all trafficked children have access to therapeutic and mental health support in collaboration with local authorities' statutory duties around this.

In addition, our research found problems in the provision of support when trafficked children turn 18, because this can trigger a change in the type of support they will receive due to their immigration status. A reduction in support and services for these young people increases their vulnerability putting them at risk of being re-trafficked. Most local authorities reported undertaking pathway planning for these children, but the quality of this planning was questioned by stakeholders. Trafficked children reported not understanding the pathway planning process, felt unsupported and that they did not have the life skills to move to independent accommodation at 18 and cope with their situation.

Recommendations:

- Local authorities must ensure that if a separated child under 18 is identified, including older children aged 16 and 17, that he or she is treated as a child in need and accommodated, supported and supervised according to their welfare needs as set out in law and in statutory guidance. This would ensure that separated children who may later be identified as having been trafficked are properly supported from first identification.
- Local authorities should ensure they have sufficient, appropriate options for good quality accommodation and care so all trafficked children have a full-time carer or advocate/legal guardian and are kept safe.

¹³ APPG inquiry into children who go missing or runaway (2012) <http://www.childrenssociety.org.uk/what-we-do/policy-and-lobbying/parliamentary-work/appg-inquiry-children-who-go-missing-or-run-away-c>

¹⁴ ECPAT UK and Save the Children (2007) Child Trafficking in Birmingham, Coventry and Solihull .ECPAT UK. London
ECPAT UK and Save the Children (2007b) Missing Out. A Study of Child Trafficking in the North- West, North-East and West Midlands. ECPAT UK. London

- A new NRM system should ensure all trafficked children have access to therapeutic and mental health support in collaboration with local authorities' statutory duties around this. However, access to these services should not depend on an NRM referral.
- The evaluation of the government's recently proposed pilot of advocates for trafficked children should explore how they work with and interact with the NRM. This should examine whether all potential victims of child trafficking are getting access sufficient the support, able to understand their rights, have their voice is heard in decisions that affect them and are supported effectively through the different legal processes they are engaged in.

Implications of the health care changes in the Immigration Act

As already highlighted, when identification of victims and decision-making within the NRM is currently so poor, support of this kind needs to be available to all separated children to ensure that all victims of trafficking are to be adequately protected. The NRM review should take note of the implications for victims of trafficking, of provisions in the Immigration Act 2014 which will remove entitlement to NHS care for unidentified victims of trafficking who have not been referred to the NRM or those who have been wrongly refused from the NRM and have no right of appeal. This will have profound implications for their recovery including access to mental health and therapeutic services, and cuts off a key frontline service from which referral or identification may otherwise have taken place.

Recommendation:

- The Department of Health (DoH) is currently consulting on how to help protect vulnerable children from these restrictions including unidentified victims of trafficking who have not been referred to the NRM or those who have been wrongly refused from the NRM. The NRM review team must liaise with the DoH to ensure this very vulnerable group is protected. We believe that all children must be exempt from NHS charging if all victims of trafficking are to be entitled to NHS care. An exemption currently stands for 'victims of trafficking'¹⁵ but it is unclear in practice how this will work. An exemption for only those referred to the NRM is not adequate and a lower threshold than this should be applied.

Should further support be provided, following the end of the reflection and recovery period, to help victims to move on with their lives, and if so what could be provided?

Lack of durable status

We are concerned by the lack of a 'durable solution' for many trafficking victims. By this we mean the plans made available to these children, not only until they reach the age of 18 but beyond into adulthood. The EU Directive on Trafficking in Human Beings states that member states are required to take due account of the child's views, needs and concerns with a view to finding a durable solution for the child (Article 14) which should be based on an individual assessment of the best interests of the child (Article 16).

NRM decision makers tend to issue so-called 'NRM leave' for a year and a day or temporary leave to unaccompanied minors (also known as 'UASC leave' and previously known as 'discretionary leave'). Often the NRM leave is granted first whilst the asylum

¹⁵ Visitor and Migrant Cost recovery Implementation Plan (2014-16)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/329789/NHS_Implementation_Plan_Phase_3.PDF

leave takes longer. These two types of leave can be confusing for a young person. We believe that this current policy does not provide vulnerable child victims with the permanence and security that they need to support their recovery from abuse and trauma, promote their learning and development or facilitate their transition into adulthood. This, in our view, does not take into account a child's need for stability or their long term life chances.

As mentioned above, in our experience, the grant of asylum or leave for trafficked children can appear to depend on their willingness to co-operate with the police for investigation or prosecution. We have cases where we believe children have been refused leave on this basis despite being deemed to be victims of trafficking and having legitimate fear of returning to their country of origin.

In practice it means that many children are left in limbo, unable to plan for the future and progress in education or employment, and may be left without a regular immigration status and at risk of detention, destitution and removal as they turn 18. This situation is further compounded following the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (which came into force in April 2013), which removed immigration from the scope of legal aid meaning legal aid is only available to a trafficking victim if he or she claims asylum, despite not all trafficking victims having grounds for an asylum claim. Many young victims of trafficking may have legitimate protection claims on human rights grounds – on Article 8 – their right to family and private life for which gathering evidence may be far easier and much less intrusive for children. Legal aid is no longer available for Article 8 claims.

While in some cases it may be in the best interests of the child to be returned to their country of origin and be reunited with their family, this is not the case for all trafficked children, particularly those with no support networks in their country, those who have lived in the UK for most of their life or those whose families have been complicit in their exploitation. Instead it may in the best interests of a child to be provided with a nationality and/or an immigration status which will permit them to remain in the UK.

Recommendation:

- The current policy of granting temporary leave to trafficked children should be reformed. A durable solution should be found for these children, which takes into account the child's views, needs and concerns and is based on their best interests.

F.) GOVERNANCE

Which organisation/organisations is/are best placed to: manage and administer the NRM; and make 'Competent Authority' decisions on trafficking claims?

Our view is that any organisation placed with managing and administering the NRM should be independent from the Home Office's priorities around immigration control and reducing net migration. We believe a system where the staff determining the status are experts in child protection, child trafficking and exploitation, and had knowledge of children's development and psychology within a global context would be more effective in determining the extent of trafficking and granting trafficking status, as well as understanding the needs of victims.

What more can be done to strengthen links between organisations involved in the identification and support of victims?

One suggestion could be a Multi-Agency Safeguarding Hub (MASH) which is a central resource for safeguarding and child protection in a local area, staffed with professionals from a range of agencies including police, health, education and social care, who share information to ensure early identification of potential significant harm. The emphasis is on triggering interventions to support the child or young person and their family to prevent harm. Closer partnership working allows the sharing not only of quantitative data but also of qualitative data that can be crucial to understanding incidents and planning an effective response. This can also lead to more effective intelligence for prosecutions for trafficking and better safeguarding responses.

There are many examples of good practice of local multi-agency working. The APPG inquiry into the safeguarding of children who run away or go missing from care¹⁶, which included trafficked children heard from Paul Hewitt, Service Manager for safeguarding children at Hillingdon Borough Council. He described how they have reduced the number of unaccompanied children that have gone missing to eight from 79 during 2007-2009 by establishing a three level multi-agency model (strategic, policy and operational) in partnership with law enforcement. The MASH has also allowed them to build a picture of the number of trafficked children in their area and plan resources to support these children.

We have been instrumental in setting up a number of multi-agency forums on CSE and missing locally which involve social and voluntary services and the police. However the quality of information sharing and intelligence gathering that takes place within these hugely depends on the willingness of agencies to be involved. Several projects report that key agencies such as social services or the police do not attend meetings. It is also important that health and drugs and alcohol services are involved so that concerns and information about young people can be shared before they escalate. In other areas we are part of co-located or virtual CSE teams or Multi-Agency Safeguarding Hubs (MASH) which are very effective at preventing, tackling, investigating and disrupting CSE. The role of the voluntary sector in working with trafficking victims should also be taken into account due to their specialist experience in working with these victims and links with communities and agencies.

Example of The Children's Society's involvement in the MASH in Lancashire

In Lancashire, we have a particularly strong relationship with Lancashire Constabulary which has been aided by co-location. Both our Street Safe project and social services have staff who work out of offices in each of the four Lancashire divisions. The presence of a police Missing from Home Co-ordinator within these multi-agency teams is of paramount importance in identifying the links and recognising the early signs of CSE in young people who are reported missing. The county has now developed a MASH which deals with all safeguarding referrals including CSE and missing. The MASH includes staff from across social services, the police, health and The Children's Society and other voluntary sector agencies.

Recommendation:

¹⁶ <http://www.childrenssociety.org.uk/what-we-do/policy-and-lobbying/parliamentary-work/appg-inquiry-children-who-go-missing-or-run-away-c>

- The possibility of situating the NRM in a MASH should be explored to ensure that children receive a full multi-agency response from specialist services that takes account of their holistic needs.

What are the advantages and disadvantages of placing the NRM onto a statutory footing and providing victims with appeal rights?

As mentioned above in Section C, the NRM should only be placed on a statutory footing if the Home Office's role in the process is omitted and the data collection element is separated from the victim referral element. In our view, victim identification should not be associated in any way with criminal investigations or immigration priorities. We would also be concerned if children's consent was not obtained as mentioned in Section C.

We believe that victims should be provided with appeal rights – this is discussed in Section D.

Recommendation:

- The NRM should only be placed on a statutory footing if the Home Office's role in the process is omitted and the data collection element is separated from the victim referral element.

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