

Hidden in plain sight

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

Executive Summary



October 2013

**The Anti Trafficking
Monitoring Group**

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

Assistance to trafficked persons

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Prevention and awareness raising

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

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

Developments in law

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

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

Child trafficking

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

Devolved administrations

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

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

Next steps

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

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

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

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

The Anti Trafficking Monitoring Group

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

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

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

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Anti-Slavery International
Black Association of Women Step Out (BAWSO)
ECPAT UK
Helen Bamber Foundation
Kalayaan
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Trafficking Awareness Raising Alliance (TARA of Glasgow Community & Safety Services)

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