



Proposal for a Revised National Referral Mechanism (NRM)

For Children

September 2014

**The Anti Trafficking
Monitoring Group**

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Preface

The Anti-Trafficking Monitoring Group (ATMG) monitors the UK's compliance with, and implementation of, the 2005 Council of Europe Convention on Action against Trafficking in Human Beings, as well as the EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. The ten organisations belonging to the ATMG are:

AFRUCA (Africans Unite Against Child Abuse)

Amnesty International UK

Anti-Slavery International

Bawso

ECPAT UK

Helen Bamber Foundation

Kalayaan

POPPY Project (of Eaves Housing for Women)

TARA project (Trafficking Awareness Raising Alliance, of Community Safety Glasgow (CSG))

UNICEF UK

In addition, the ATMG works closely with the Human Trafficking Foundation.

This proposal was researched and written by Chloe Setter (Head of Advocacy, Policy & Campaigns at ECPAT UK) and Nadine Finch (Barrister, Garden Court Chambers).

For more information please contact Chloe Setter on 0207 6072135 or c.setter@ecpat.org.uk.

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Summary

The Anti-Trafficking Monitoring Group (ATMG) was established in 2009, to monitor the UK's implementation of the Council of Europe Convention on Action against Trafficking in Human Beings (and latterly the European Directive on Trafficking 2011/36/EU). Since its inception, the group has had critical concerns in the way that the National Referral Mechanism (NRM) identifies child victims of trafficking (those under 18).

After the NRM's first year of operation, the ATMG published a report¹ that criticised the lack of sufficient expertise in relation to children of those tasked with identifying child victims. Further, the decision to 'bypass' the existing strong and mature child protection system and locate the children's NRM outside of this system, the report argued, had a detrimental effect on trafficked children. It also asserted that children were not mini-adults and putting children and young people through such a system was inappropriate.

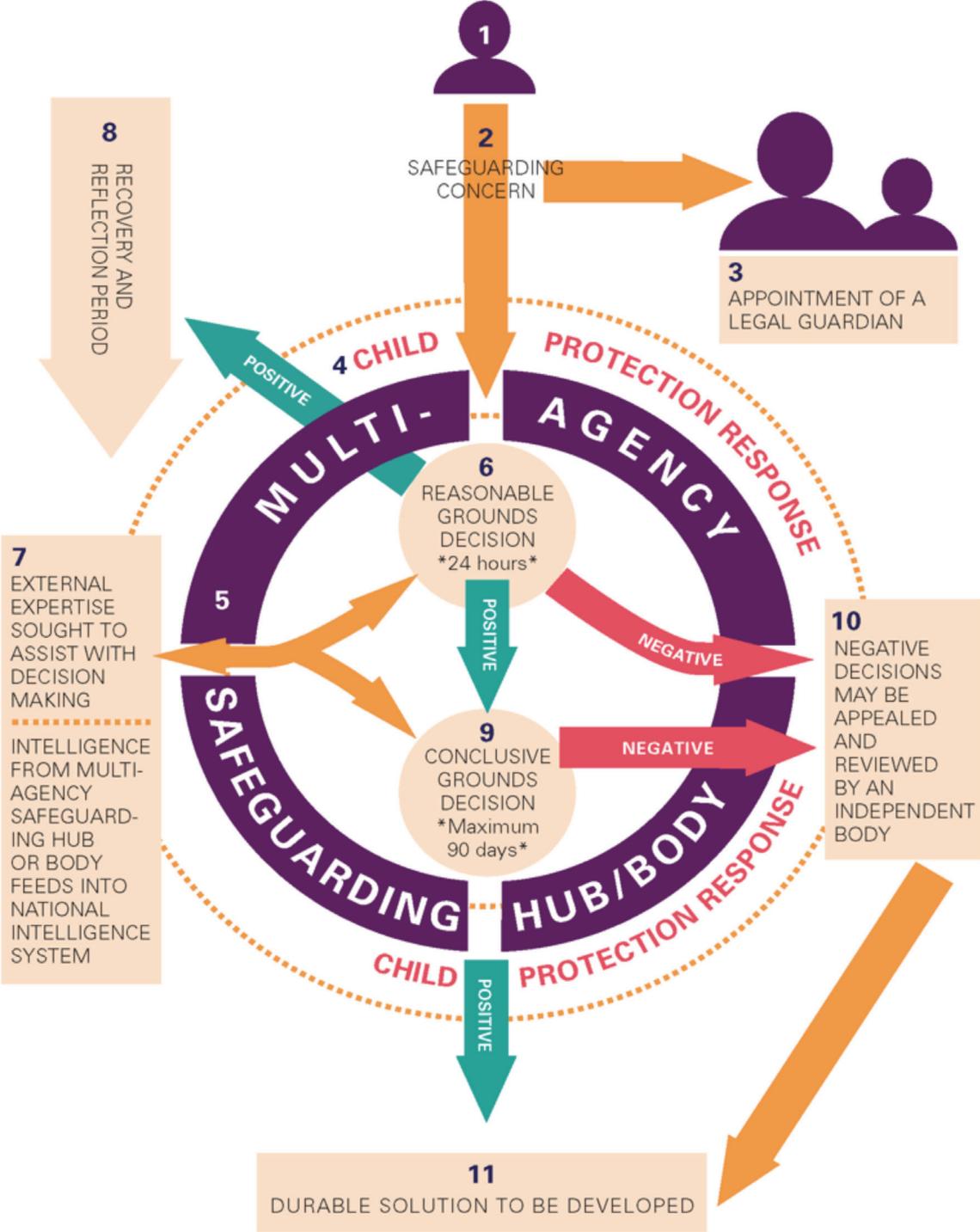
Since then, the ATMG has produced research examining the NRM in practice for children. We have found evidence of poor decision-making, a worrying lack of child-specific knowledge and child safeguarding, an inappropriate focus on immigration, low awareness of the NRM, a lack of training and a lack of a formal recovery and reflection period for children.

In welcoming the Home office's decision to review the NRM, the ATMG has produced a best practice model NRM for children that ensures the key principles of an effective model of identification for child victims of trafficking are met. These include but are not limited to:

- A child-rights centred approach that puts children's best interests at its heart
- A non-discriminatory model that is purely about the effective identification of trafficked children not conflated with the consideration of the child's nationality or immigration status
- The use and development of existing child protection structures that recognise child trafficking as child abuse and the provision of an individualised, appropriate safeguarding response
- The recognition that a child cannot give informed consent
- A fair and trust-based model that incorporates the views and experiences of the child and does not base decisions on the perceived credibility of the child's account alone
- A model involving skilled and experienced child protection professionals, working together in a multi-agency setting with other statutory agencies, civil society and other relevant organisations
- A localised model that empowers professionals and drives up awareness and understanding of trafficking and feeds into a centralised intelligence picture to prevent and combat the trafficking of children.

¹Wrong kind of victim? 2010 Available here: http://www.antislavery.org/includes/documents/cm_docs/2010/a/1_atmg_report_for_web.pdf

Figure 1: Infographic of Revised NRM Model for Children



Infographic Key

1. A child - or person claiming to be a child, or where there is reason to believe he or she is a child – who is a potential victim of trafficking, exploitation or modern slavery (i.e. meets the known indicators of trafficking – see the 2011 London Safeguarding Trafficked Children Toolkit matrix) should be referred into the local multi-agency safeguarding hub or equivalent body. Any unaccompanied or separated child should also automatically be included in this category because of the associated risk with trafficking in particular.

2. The safeguarding concern, whether from the public, an NGO or a statutory agency, is immediately passed on to the local multi-agency safeguarding hub or body.

3. This referral should trigger the immediate appointment of an independent legal guardian to all children where there is suspicion of trafficking, and all children who are separated or unaccompanied.

4. Child trafficking is child abuse so the required statutory child protection procedures should occur concurrently with the child’s referral into the local multi-agency safeguarding hub or body and continue regardless of the outcome of the hub or body, ensuring the child’s best interests and safety are paramount.

5. The multi-agency safeguarding hub or body is based on the existing Multi-Agency Safeguarding Hub (MASH) model that exists in many local authority areas currently. Where there is no such model in existence, a similarly functioning local multi-agency body, featuring core members of police, social services, health, specialist NGOs and others, should be created under the auspice of the Local Children’s Safeguarding Board (LSCB). The MASH or its equivalent multi-agency body builds on local expertise and works to quickly and effectively identify and assess quickly in a multi-agency setting. Such a model should be employed to make both the initial and conclusive decision about the status of a child as a victim of trafficking, exploitation or modern slavery.

6. The MASH or equivalent should make a reasonable grounds decision using the existing low threshold of ‘I suspect but cannot prove’. If a referral has been made in which a child meets the indicators of trafficking and exploitation, this should be an automatic positive decision within 24 hours.

7. The MASH or equivalent should seek external expertise and intelligence where required, such as expert country reports, or intelligence from the UK Human Trafficking Centre or Europol. Equally, information and intelligence from the hub should feed into the national intelligence system. Protocols on how this should be shared securely without breaching a child’s right to privacy should be determined.

8. Following a positive reasonable grounds decision, a child’s Recovery & Reflection period shall begin in which no asylum or humanitarian protection claim shall be sought until final determination of his or her victim status. This period should incorporate specialist support and specialist safe accommodation for the child tailored to their needs in line and must be in accordance with obligations under the Children Act 1989 (note the child may need specialist support/accommodation longer than the 90 day period and this should be judged on a case by case basis depending on the child’s needs).

9. A conclusive grounds decision should take no more than 90 days. In the period from the reasonable grounds decision to this point, the MASH or equivalent should seek out multi-agency input, as well as the above external expertise and intelligence, but giving due weight to the child's account and not basing its decision on the child's credibility, in order to reach its conclusion.

10. Negative reasonable and conclusive grounds decisions should be able to be appealed by the child, with assistance from the independent legal guardian, and reviewed by an independent body within a reasonable timescale.

11. The identification of any child as a potential victim or victim of trafficking, exploitation or modern slavery should feed into the wider need for the creation of a durable solution.

Present Opportunities and Outline of Issue

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1. This paper seeks to initiate a new discussion on the form and content of an NRM for children who may have been trafficked (as well as those who have been exploited or held in modern slavery). It presents a proposed model that puts children at the heart of the identification process, embedding it within existing safeguarding processes in order to identify more children who may have been trafficked and generally improve the UK's response to trafficked children.
2. The NRM was implemented in April 2009, after the UK Government ratified the Council of Europe Convention on Action against Trafficking in Human Beings in December 2008. However, in the past five years, ECPAT UK, the Anti-Trafficking Monitoring Group and others, have expressed concerns about the way in which the NRM operates in relation to children who may have been trafficked and the impact of the decisions made under the present NRM on these children's lives and well-being.
3. An overview of these concerns is outlined below:
 - i. Low awareness of the NRM system and child trafficking indicators/definition/profiles among First Responders in particular
 - ii. Low referral rate among some local authorities that see little purpose in the NRM for children
 - iii. Low conclusive grounds rate decision for children (around 31% from April 2009 up until June 2012), which is lower than that of adults, despite the simpler definition of child trafficking
 - iv. Lack of child-specific training and child protection specialism among case owners in the Competent Authorities
 - v. Potential discrimination in the decision-making process (against specific nationalities, age groups and children generally)
 - vi. Poor decision-making that is frequently based on credibility (and often, wrongly, consent) and lacks an understanding of child development and the impact of trauma and abuse on children
 - vii. Lack of a formal appeal system
 - viii. Lack of any independent evaluation/monitoring of the operation of the NRM and any scrutiny, either internally or externally, of decisions made
 - ix. Lack of multi-agency input in the decision-making process

- x. Poor communication between First Responders, relevant agencies and the Competent Authorities
 - xi. Conflation between asylum claims and identification within the NRM
 - xii. Lack of policy/guidance on how the NRM fits within the best interests requirement and the duty to create a durable solution for trafficked children in Article 16 of the EU Anti-Trafficking Directive
 - xiii. No statutory basis for the NRM, so no requirement to refer, or for First Responders to participate in the identification process
 - xiv. Civil standard of proof for a conclusive grounds decision
 - xv. Little known on the impact of NRM decisions on children in the short and long term
 - xvi. Lack of input by the child into the NRM process and a lack of understanding of the NRM
 - xvii. Lack of long-term evaluation of the NRM and support for child victims of trafficking
4. At present, the NRM is a process for children that is complex and frequently makes erroneous decisions that have hugely negative implications on vulnerable children. Child trafficking is child abuse, but the creation of a system that is separate from existing child protection structures has isolated the issue and reinforced it as an immigration issue, leading to concerns over the safeguarding of trafficked children. Too much emphasis is placed on obtaining information from children who may not be in a position to provide it because of their age or lack of understanding of the trafficking or the exploitation which they experienced. The Competent Authority may also give too much weight to information which is relevant to the asylum determination process or which is obtained very shortly after a child arrived here. Currently, the burden is on the child to **prove** they have been a victim of trafficking rather than on the authorities to identify them as such, despite their being vulnerable, traumatised and often still under the influence and control of their traffickers. In particular, the Competent Authority does not seek any further information about a child but relies on the initial NRM referral form and information derived from any asylum determination interviews and statements.
 5. Essentially, a failure to refer into the NRM and/or a failure to correctly identify a child victim of trafficking can have significant implications for a child. For example, at present, in some instances, a child must have a positive reasonable grounds decision in order to access legal aid, which only highlights the importance of the NRM in a child's life. Failure to identify, or to identify at an early stage, could negatively impact on a criminal investigation into the child's traffickers and impede the child's access to justice and compensation. Perhaps more significantly, failure to identify could put a child at risk of harm and re-exploitation. Sixty-four per cent of child victims of trafficking go missing from local authority care, often within days or weeks of entering the care system². Failure to provide potential child victims with the appropriate protection, support, counselling and accommodation could result in significant safeguarding issues and may lead to a child going missing and being re-exploited, often to never be found again. The importance of early and quality identification can therefore not be underestimated. A review into the NRM for children is welcomed so such concerns can be fully addressed.
 6. Little research has been done into the impact of the NRM, how it fits into existing child protection structures and how its decisions impact on the child victims themselves. ECPAT UK and others have worked with children who may have been trafficked for nearly a decade and witnessed the interaction of these children with the NRM process. Frequently, they have no awareness or understanding of what the decision means as no one has explained it to them. This results in their having little input into the NRM and their voices and potential for any participation is lost.
 7. Children who receive a negative reasonable grounds or conclusive grounds decision can

²Strategic Threat Assessment: Child Trafficking in the UK, CEOP (2010)

feel hugely traumatised by not being believed. It is a common control method for traffickers to subjugate children by telling them that if they escape or disclose their experiences that no one will believe them. Not being believed and receiving a letter telling them they are not a victim of trafficking in the eyes of the UK Government is not only distressing but potentially dangerous – if children are not believed initially, they may not speak out again for fear of not being believed in the future or may put more faith in the words of their traffickers than those who are supposed to protect them. The lack of a formal appeal process only compounds this traumatic situation.

8. Clause 42(1) of the Modern Slavery Bill states that the Secretary of State must issue guidance to such public authorities and other persons as the Secretary of State considers appropriate about (c) arrangements for determining whether a person is to be treated as a victim of slavery or human trafficking. This suggests that she believes that both officials and civil society should remain involved in any new NRM process. But it also provides an opportunity to suggest a different process which, unlike the present one, conforms more closely to international, regional and national law designed to fully protect children who may have been trafficked.
9. At the same time, the terms of the NRM review being conducted by the Home Office state that it will consider whether the present NRM is effectively identifying, referring, assisting and protecting child victims of human trafficking. In addition it poses important questions about the governance of the present NRM structure:
 - Which organisation/organisations is/are best placed to: manage and administer the NRM; and make ‘Competent Authority’ decisions on trafficking claims?
 - What more can be done to strengthen links between organisations involved in the identification and support of victims?
 - Are the links with wider organisations (First Responders, victim support sub-contractors etc) effective and do they support successful identification of, and help for victims?
 - What are the advantages and disadvantages of placing the NRM onto a statutory footing and providing victims with appeal rights?

International Obligations

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10. This paper seeks to answer these questions by analysing the international obligations, which exist in relation to child victims of human trafficking. For example, Article 2 of the UN Convention on the Rights of the Child (‘the UNCRC’) states that the Convention applies to all children without discrimination. Therefore, it applies to all victims of child trafficking and exploitation, whether or not they are British citizens. The UNCRC also contains a number of other articles, which are of particular relevance. For example, Article 35 obliges the UK Government to take all appropriate national measures to prevent trafficking in children. Article 34 obliges it to protect children from all forms of sexual exploitation and abuse and Article 36 obliges it to protect children against all other forms of exploitation.
11. Article 3 of the UNCRC contains an over-arching principle, which obliges the UK Government to treat the best interests of a child as a primary consideration in all of its actions, which is reinforced in recent case law³. This is of central importance in relation to the establishment, development and continuation of a new NRM system. The UN Committee on the Rights of the

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³ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4 & Zoumbas v Secretary of State for the Home Department [2013] UKSC 74

Child's General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (Art 3, Para 1) provides guidance on the content of this concept. In particular, at paragraph 4 of General Comment No. 14 the Committee explains that ensuring a child's best interests means taking steps which will mean that a child is able to enjoy all relevant rights recognised in the Convention and that there is no hierarchy of rights in the Convention. As a consequence all of the rights contained in the UNCRC, including those highlighted above, are integral to the bundle of rights that may be labelled as being in the child's best interests.

12. The Committee also reminded governments that a child's 'best interests' obligation should be applied in three different ways:
 - i. As a substantive right to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake;
 - ii. As a fundamental, interpretative legal principle. Therefore, if a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen; and
 - iii. As a rule of procedure so that whenever a decision is to be made that will affect a specific child, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on that child.

Therefore, in order for an NRM to be in a child's best interests, it will need to deliver the protection and assistance appropriate to his or her personal circumstances. It will also have to be an important element in the decision making process itself. Finally, it must include a determination of a durable solution for the child.

13. Other useful documents of reference regarding international best practice on National Referral Mechanisms include the *National Referral Mechanisms, Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook* (2004), recommendations of the EU endorsed by a conference at the first Anti-Trafficking Day in Brussels, October 18th 2007 and the International Centre for Migration Policy Development's (ICMPD) *A Model for Transnational Cooperation in the Referral and Assistance of Trafficked Persons* (2009).

National Obligations

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14. The best interests principle has also been incorporated into national law by Article 24.2 of the EU Charter of Fundamental Rights⁴ and the EU Directive on *Preventing and Combating Trafficking in Human Beings and Protecting its Victims*. In particular, the recital to the Directive notes that: "Children are more vulnerable than adults and therefore at greater risk of becoming victims of trafficking in human beings. In the application of this Directive, the child's best interests must be a primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and the 1989 United Nations Convention on the Rights of the Child."
15. The United Kingdom has also ratified the Council of Europe Convention on *Action against*

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⁴2007/C 303/01

Trafficking in Human Beings. Its recital also acknowledges that the Convention must take a child-rights approach. In addition the *EU Strategy towards the eradication of trafficking in human beings* recommends that states should adopt comprehensive child-sensitive protection systems that ensure inter-agency and multi-disciplinary co-ordination. It is within this wider child protection system that relates to all children that the EU Commission locates protection for child victims of human trafficking. The European Commission is currently carrying out a wide-ranging consultation on child protection systems and hopes to publish guidance later this year.

The Need for a Multi-Agency Response

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16. In June 2014, the Fundamental Rights Agency (FRA) published a best practice report on *'Guardianship for Children deprived of Parental Care'*. The handbook defines the role of a guardian in protecting children from abuse and exploitation. It says the guardian plays a 'central role in integrated child protection systems' and aims to promote a shared understanding of the principles of guardianship systems across the European Union. It makes it clear that child trafficking must be seen within the context of existing child protection system as otherwise it risks becoming fragmented and putting children at risk. In particular, it explains that:

*'Historically, child protection has focused on particular issues or on specific groups of vulnerable children. Although this approach can be effective in serving the needs of a targeted group, it also has important limitations. Many children, including child victims of trafficking, may have multiple child protection problems. Fragmented child protection responses may deal with one of these problems, but fail to provide a comprehensive solution. Focusing on selected issues alone, or on particular groups of children, is neither sustainable nor effective. In cases of child victims of trafficking, identification as a child victim or a child at risk of trafficking may occur at different points on a continuum of a child's individual protection needs. Therefore, increasingly, there is a move away at the European and global levels from fragmented issue-focused approaches to a systems approach to child protection.'*⁵

17. It is therefore important that the NRM process is embedded within existing child protection systems in the UK so that trafficking, which is child abuse, is not just seen as an 'add-on' or supplementary issue. The FRA report states that any child protection system should place the child at the centre, ensuring all essential actors and systems work together to protect the child. In doing so, 'such an integrated approach can respond to a variety of situations an individual child can encounter', including child trafficking and other forms of exploitation and abuse⁶.

18. The present NRM process involves a number of official bodies and non-governmental organisations playing the part of First Responders but the role of Competent Authority is played by either UK Human Trafficking Centre (UKHTC) or the parts of the Home Office, which are charged with the task of controlling immigration, such as UK Visas and Immigration, the Criminal Casework Directorate and the Third Country Unit. This means that the neither the initial identification nor the reasonable grounds or conclusive decision is actually a multi-agency

⁵Fundamental Rights Agency: *Guardianship for Children deprived of Parental Care* (2014), pp16-17

⁶*ibid*

process.

19. There are still a substantial number of children being unlawfully prosecuted and imprisoned as offenders because they have not been identified as children who may have been trafficked. For example, this often happens when a child has been trafficked into and/or exploited in a cannabis factory. This raises serious questions about whether police officers, social workers and other professionals have the necessary skills and experience to identify child victims of trafficking without the assistance of a multi-agency approach.
20. In addition, professionals and NGOs, who do not usually have child protection duties, are unlikely to be familiar with the possible challenges of obtaining information from a child or the need to take a child's best interests into account at all stages of the NRM process. Therefore, it is important that appropriately trained and qualified professionals are involved at all stages of the NRM.
21. It is also unlikely that any one individual First Responder will understand the totality of the trafficked child's situation and needs or have the basket of skills necessary to respond to the complexities which often arise in a child victim's case. For example, the child may be a victim of a crime and/or a human rights abuse, be entitled to asylum, have been wrongfully found to be an adult, have been accused of a crime and at the same time may be suffering from severe trauma. In rare cases the child may also be subject to care proceedings in the family court.
22. Therefore, for an NRM to be truly effective for a child it needs to be located in the wider child protection system. This does not mean that children's services should act as the sole First Responder or the Competent Authority for all children who may be victims of trafficking. Instead, children's services should be an important part of a multi-agency approach that also includes police and border force officers, members of a youth offending teams, lawyers, NGOs, health professionals and teachers. This is a similar approach to that taken already under the Multi-Agency Safeguarding Hubs (MASH) model, which can be applied to both children and vulnerable adults.
23. The ATMG's proposed model would see the reasonable grounds decision and conclusive grounds decision located in a MASH⁷ or equivalent multi-agency safeguarding body. Utilising such an existing and well-regarded multi-disciplinary model would bring together expert professionals from relevant statutory services by co-locating professionals from social care departments, police forces and the health service and others and enabling them to share relevant data. Existing MASH have additional 'virtual' members from other relevant services, such as the education service or Youth Offending Teams, which join the decision making process where this is relevant in individual cases. Others call on the knowledge of specialist NGOs. The MASH model manages safeguarding referrals and assesses risk in a secure environment, and referrals are currently made via the usual child protection route (police and local authority). It activates the 'frontline' response to protect children. Unless such a well-defined multi-agency approach is utilised for identifying vulnerable children such as trafficked and exploited children, it is unlikely that all child victims will be identified and protected before they go missing or a re-trafficked or suffer further exploitation. This model puts children at the heart of decision-making and risk assessment process but individual children do not participate directly in the process. If the NRM for children became part of a MASH or local/regional multi-agency safeguarding body, accountability could be provided by Local Safeguarding Children Boards and/or the Department for Education, as is the case for the governance of local MASH already in existence. The MASH

⁷It is ECPAT UK's understanding that any increase in MASH workload would require extra resources but the NRM numbers demonstrate that should not be significant given the geographical spread of 'potential victim's in England and Wales. Scotland and Northern Ireland do not have a MASH structure at present but there are systems which could be adapted and play a similar role. Demand modelling and volume metrics can be used to determine the extra resources needed to cope with an increase in workload for existing MASH

or equivalent multi-agency body would also be able to act as a single point of contact for all safeguarding concerns for trafficked children within a local authority. Where a MASH also addresses the needs of vulnerable adults' protection could also be provided to age disputed trafficked children.

24. By embedding identification of children who may have been trafficked within an existing structure, such as MASH or an equivalent local/regional multi-agency body, it is less likely that children would not be referred into the NRM. The protection and identification processes would also operate in parallel with the child at the centre of the process, meaning that the identification for the purposes of the NRM would not be an 'add-on' to the child protection process, but a part of it, embedded within it and being handled by those with the appropriate and required expertise with children who had received specialist training in trafficking, exploitation and modern slavery.

Child Trafficking Advocate or Legal Guardian

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25. The appointment of a legal guardian would also play an important part in this new form of NRM for a child victim. Article 16.3 of the EU Anti-Trafficking Directive obliges states to take the necessary measures to ensure that, where appropriate, a guardian is appointed to unaccompanied child victims of trafficking in human beings. Such a guardian could co-ordinate the actions of the many other actors involved in the wider child protection and ensure that they were able to share relevant information and provide the child with appropriate assistance. The guardian could also provide the necessary link between the child and any lawyers involved in his or her case and compensate for the fact that a child lacks legal capacity and may even be too young to understand that he or she has been trafficked and/or exploited.

Referrals into the MASH or Multi-Agency Safeguarding Body and the Reasonable Grounds Decision

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26. The complexity of a child's circumstances may make it very difficult to effectively identify him or her as a victim of child trafficking. This may simply be because no one individual has enough information about the child. However, it may also be the case that the trauma, which the child has experienced, may prevent him or her child from disclosing the very information which would lead to him or her being identified as a trafficked child, until his or her psycho-social recovery has started.
27. Experienced solicitors and other professionals, who work with these children, have confirmed

that it may well take such a child much longer than an adult to disclose the totality of his or her past experiences and exploitation. They may also be more susceptible to pressure exerted by a parent, trafficker and/or exploiter to lie about their journey to the United Kingdom and/or their past experiences. As a consequence, they may not disclose essential information until they begin to build a relationship of trust with another adult, such as a child trafficking advocate or legal guardian.

28. It is also well documented that many professionals, including First Responders, have little or no knowledge about trafficking and exploitation, often not being aware of the indicators or the difficulties in identifying a child who does not disclose or gives false or inconsistent information. If the proposed new NRM system for children is placed on a statutory footing in the Modern Slavery Bill, the duty for professionals to identify and use the NRM procedure would ensure this process was taken seriously by all frontline practitioners.
29. Any safeguarding concern about a child would trigger an obligation to collect and share information about the child by the MASH. This would be the case whether an unaccompanied or separated child was in an unregistered private fostering arrangement or should be the subject to a Section 47 inquiry. An assessment of whether the child may also have been trafficked or exploited could be part of this core response as long as professionals within the Hub had been provided with relevant training.
30. Information or concerns about a child can come from anywhere. The recommended advice for members of the public or other agencies is to pass on such safeguarding concerns to the police or children's services who would then process them through the MASH or equivalent multi-agency safeguarding body. In this new NRM model it is proposed that any statutory agency or children's NGO could refer directly into the MASH, or equivalent body, with a child protection concern and/or a trafficking suspicion. The existing matrix of indicators, as well as NRM form could still be used to make a referral, but even if such indicators were not initially present professionals within the MASH or an equivalent multi-agency safeguarding body could be trained to be alert to the fact that evidence may emerge later which suggested that the child had been trafficked or exploited. In cases where trafficking has not been raised but a separate concern is raised, such as the child being unaccompanied child or in an unregistered private fostering arrangement, the multi-agency group could still examine the evidence for indicators of child trafficking and act as a safety net for those cases missed by First Responders. Utilising the MASH structure already in existence would allow more children to be referred and identified as opposed to the existing NRM system where many children do not get referred and thus are not identified, given appropriate support and assistance, and the official numbers are therefore an under-estimate of the true extent of child trafficking.
31. At present the reasonable grounds decision is taken by UKHTC or the Home Office, which are not child protection agencies. This fact alone suggests that they are not the appropriate agencies to take such a decision. Furthermore, the decision to appoint one agency as the Competent Authority for those who are subject to immigration control, is not in accordance with Article 10.1 of the Council of Europe Convention *on Action* against Trafficking in Human Beings, which refers to different authorities collaborating with each other as well as with relevant support organisations. Article 10.2 also obliges parties to the Convention to adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations.
32. In addition, Article 10.1 refers to the procedure needing to take into account the special situation of child victims, which suggests that it should be based on an assessment of child-specific needs and risks and include all actors who have child protection duties.
33. There has been a suggestion that First Responders should make the reasonable grounds decision. However, as noted above, very few of them are child protection specialists or are adequately trained. In addition, in its recent report the Centre for Social Justice⁹ found that

many referral forms from First Responders contained insufficient information for the Competent Authority to make a decision.

34. In any event, granting such a decision to one agency or organisation would not amount to the necessary multi-agency approach. It would also mean that there were no checks and balances built into the process. The fact that there is a low standard of proof for making a reasonable grounds decision does not necessarily mean that a First Responder understands how to accurately apply this standard or that he or she will have the necessary understanding of child rights to make a correct decision.
35. In contrast bringing together all actors and NGOs with child protection expertise would mean that, as a group, the decision makers would have the necessary skills, experience and information to identify a trafficked child. For example, the reasonable grounds decision could be made by a MASH or an equivalent local multi-agency safeguarding body or pane⁹. Because the threshold is low for a reasonable grounds decision, it would be recommended that reasonable grounds decisions would be made within 24 hours. Some Local Safeguarding Children's Boards already have multi-agency trafficking sub-groups. These frequently include specialist child NGO members (for example, ECPAT UK sits on the Kent Trafficking Children and Sexual Exploitation Sub Group, the Hillingdon LSCB Trafficking Sub Group and the London LSCBs Trafficking Sub Group), so such a precedent is already set. (In a MASH or equivalent local multi-agency group there would need to be clearly defined protocols to allow the participation of specialist NGOs due to the sensitive and confidential nature of the case information that is shared about a child.)
36. The ATMG's proposed new NRM model would concentrate attention on the need to ascertain whether or not a child had been trafficked, irrespective of their immigration status or lack of such status, and bring to an end current practices within which decisions within the asylum determination process tend to dictate whether a child is recognised as a trafficked child. Existing evidence has shown this to a major concern with significantly fewer positive decisions being reached by the Home Office than its counterpart Competent Authority UKHTC¹⁰. The information provided by border or immigration officers would still be relevant when reaching a reasonable and conclusive grounds decision but it would not be determinative as the decision would be part of a multi-agency approach.
37. The MASH or equivalent locally-based multi-agency body would need to be sufficiently and regularly trained on issues of child trafficking and child development and have access to information on profiles and trends in relation to child trafficking. It could be that this is line with the ongoing development of National Occupational Standards¹¹ on trafficking/slavery.
38. Child trafficking advocates (or legal guardians) would not be part of the MASH or an equivalent group as it would be their role to support the child and ensure that other actors act in the child's best interests.
39. There may also be concerns about the child's immigration status when a child is referred. However, local authorities are obliged by Section 20 of the Children Act 1989 to provide any child who is in their geographic area with accommodation and support when they are unaccompanied and without such accommodation. This applies to children who may have been trafficked and/or exploited, even if they have no leave to remain in the United Kingdom.
40. At the same time it is the Secretary of State for the Home Department's policy that no unaccompanied child will be removed to a place to which they can be returned until safe

⁸The Centre for Social Justice: It Happens Here (2013) pp73-74

⁹LSCBs are established by children's services departments under Section 10 of the Children Act 2004

¹⁰ATMG: Hidden in Plain Sight (2013)

¹¹It is ECPAT UK's understanding that the Home Office is working to develop National Occupational Standards with its Training Sub-Group

and adequate reception arrangements are in place there¹². Therefore, during the Recovery & Reflection stage the child would not be at risk of being removed from the United Kingdom.

41. A further question arises as to whether these children will be entitled to Legal Aid Authority funding during this stage, as they will not yet have been recognised as victims of human trafficking. It would be vital to ensure all potential child victims of trafficking could access legal aid, if required.
42. They will be entitled to free legal advice and representation if they have the basis for an application for asylum. In addition, if they have access to a child trafficking advocate, they will be provided with a basic understanding of their legal rights. In any event, as they would also be children in need accommodated by a local authority, the relevant children's services department would be under a duty to pay for any legal advice and representation needed for the relatively short period before any reasonable grounds or conclusive decision is made. Furthermore, during this stage, as no decision would yet have been taken in relation to their status, their need for legal advice or representation would be limited.
43. Different factors apply in relation to children, who are EEA nationals, as they are not subject to immigration control and will not be entitled to apply for asylum or Humanitarian Protection. As a consequence, policies relating to unaccompanied asylum-seeking children do not apply to them. However, EU Regulation Brussels IIR will apply to them and the local authority will have to consider whether they can be deemed to be habitually resident in the United Kingdom and whether a care order should be applied for if their parents seek to use the courts in their country of residence to have them returned to that country and there is evidence or a suspicion that their parents have been involved in trafficking and/or exploiting them. (If a care order is applied for the child will be entitled to free legal aid and the Family Court will also appoint a *guardian ad litem* to represent their interests during the care proceedings.)
44. The local authority will be obliged to undertake an assessment of the child's needs as part of its general duties under the Children Act 1989 and this will form part of the matrix of information about the child, which is shared within any existing children's MASH. However, even if there is no MASH or equivalent in place, the local authority should develop information sharing protocols with other actors such as the police, health and educational authorities, the immigration service, the child trafficking advocate (or legal guardian) and appropriate NGOs. These protocols would need to be consistent nationally and have to take into account any legislation and policies relating to confidentiality and data protection. Protocols would also need to be developed in relation to the development and sharing of appropriate child specific country of origin information to ensure that all actors had a better understanding of the circumstances and communities from which a child originated.
45. The local authority is also under a duty to promote co-operation to improve the well-being of children in its area, which arises from Section 10 of the Children Act 2004. It will do this within its Local Safeguarding Children Board and any MASH.
46. If a person is age disputed, their referral should still be processed through the children's MASH structure or a children's multi-agency safeguarding body and they should be presumed to be a child until full and final determination of their age and any judicial review of the decision that he or she is not a child. This is in line with the EU Trafficking Directive's 'presumption of age' principle, which states that: *'where the age of a person subject to trafficking is uncertain, and there are reasons to believe it is less than 18 years, that person should be presumed to be a child and receive immediate assistance, support and protection. (Article 13.2)...Assistance and*

¹²Para 17.17 of the UK Visas and Immigration *Processing an asylum application from a child*

support measures for child victims should focus on their physical and psycho-social recovery and on a durable solution for the person in question (preamble Paragraph 22).'

47. If the child or age-disputed person being referred is held in police custody or detention, the decision to prosecute should be stayed until after the receipt of a conclusive grounds decision, and if an appeal and/or an application for a review against a negative decision has been lodged, until it has been finally determined.
48. The local authority and/or MASH or equivalent would also have to liaise with the UKHTC, in its position within the National Crime Agency, as it will retain its role of gathering intelligence on human trafficking throughout the UK and data sharing protocols may need to be established with it in order to establish a more accurate national picture and a detailed centralised database

Conclusive Grounds Decision & Recovery and Reflection Period

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49. The same members of the MASH or equivalent multi-agency body could be convened at a later date to make a conclusive grounds decision. By this time the different actors will have had the opportunity to make further investigations, engage with the child and seek further evidence.
50. A conclusive grounds decision should usually be taken within a maximum of 90 days but provision should be made for cases where it is necessary to obtain external, expert medical, psychiatric or country evidence before a conclusive grounds decision can be made about an individual child following an adequate recovery and reflection period.

Rights of Appeal

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51. At present there is no right of appeal against a negative reasonable grounds or conclusive grounds decision. The only remedy is to bring a claim of judicial review against the decision. This is not the equivalent of a right of appeal as it addresses the question of whether the initial decision was taken in a manner that was procedurally correct. It does not directly address the substance of whether the child has been trafficked.
52. If these decisions were taken by a MASH or a local multi-agency safeguarding body, it may be appropriate for there to be a right of apply to the Family Court. This would give rise to a need for an amendment to the Children Act 2004. However, Her Majesty's Chief Inspector of Education, Children's services and Skills does have a duty to review functions of Local Safeguarding Children's Boards in certain circumstances under Section 15A of the Children Act 2004.
53. It could also be a key role of the proposed Anti-Slavery Commissioner to monitor and evaluate the NRM process.

Immigration Status

- 54. Where a trafficked child is subject to immigration control, any determination of any right to asylum, Humanitarian Protection or other leave to remain should be stayed until a conclusive decision has been made. This is because a decision as to whether a child is a victim of human trafficking will be a crucial finding of fact on which to base any decision about protection under the Refugee Convention or the European Convention on Human Rights. A well-functioning NRM will be best placed to decide, as a matter of evidence, whether a child is a victim of human trafficking and that this evidential decision needs to be made before an asylum determination is made. Furthermore, as the NRM is a decision about what happened in the past this is a necessary part of the factual matrix before an asylum determination can be made about persecution on the basis of human trafficking in the past. It is important to note that embedding a decision in the existing safeguarding process would also assist any assessment of future risks to the child.
- 55. The current practice where the Home Office makes decisions within the NRM and on immigration status concurrently has also deprived children of the benefit of the recovery and reflection period provided by Article 13 of the Trafficking Convention by requiring a child to apply for asylum before this period has been completed or even started. This period of reflection may be particularly important for children considering applying for asylum as a successful grant of refugee status will have additional consequences for the child. For example, as UK law does not provide a right for parents or other family members to join a child who is recognised as a refugee, it may mean a child is separated from his or her family until they become 18 or even on a permanent basis.
- 56. It has also meant that children have applied for asylum before they have started the psycho-social referral process which may enable them to provide more cogent and extensive evidence of their future persecution.

Durable Solution

- 57. In addition, the present practice employed by UK Visas and Immigration, the Criminal Casework Directorate and the Third Country Unit ignores the fact that Article 16.2 of the EU Anti-Trafficking Directive states: 'Member States shall take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child.' Granting a child a residence permit in order to give evidence in a criminal trial or until the age of 17.5 as an unaccompanied child would not amount to a durable solution. A child may be recognised as a refugee under the Convention Relating to the Status of Refugees on account of previously being a trafficked child and there being a serious risk that he or she would be persecuted if returned to his or her country of origin or habitual residence. In the alternative the child may be entitled to Humanitarian Protection or a residence permit to prevent a breach of the European Convention on Human Rights. However, these decisions would not be a durable solution unless there was also an agreed plan for the child which would extend into his or her adulthood and was based on a detailed and individual assessment of his or her best interests – identification as a victim of trafficking and ongoing risk must form a part of this durable solution. This is because Article 16.2 of the EU Directive on preventing and combating trafficking in human beings and protecting its victims states that: "Member States shall take reasonable measures with a view to finding a durable solution based on an individual assessment of the best interests of the child".

Scotland and Northern Ireland

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58. In Scotland, a model (the 'Glasgow Model') has previously been proposed for improving the identification of child victims of trafficking, which echoes the principles of this proposed model by the ATMG but is based on existing Scottish policy and practice. Similar concerns are raised about the existing NRM process as outlined in this paper, particularly how/if the system operates in the best interests of children and an acknowledgement of the damaging effect of the conflation of asylum and identification of trafficking.
59. The Glasgow Model proposes a child-rights based, multi-agency approach that is similar to the ATMG proposed model for children. In the Glasgow Model, responsibility for identification lies with child protection authorities, consistent with everyday child protection practice. It proposes specialist training on child trafficking for those who lead on the issue within each Child Protection Committee but with initial (reasonable grounds decisions) identification to be made at a multi-agency child protection case discussion. This would be followed up by a child protection case conference, in line with local and national child protection guidance, which would include all relevant agencies working with or whom have information about the child in question. The child would be able to pre-record a statement on video or other recording to ensure their voice is heard. This is an aspect of the proposed model which is also supported by the Scottish Guardianship Service. The child protection case conference would then make a multi-agency decision or conclusive grounds decision on whether a child has been trafficked.
60. Such decisions could be challenged by the child through internal review processes or via a Judicial Review. However, primary legislation would be required before children aged 16 and above and not previously under supervision or known to the Children's Hearing system could have their cases referred to the Children's Reporter if it was felt that compulsory measures of care were required.
61. In Northern Ireland, a statutory multi-agency Safeguarding Board was established by the Department of Health, Social Services and Public Safety in 2012. This was a response to a realisation that a child was more likely to be protected when agencies work in an all-inclusive, co-ordinated and consistent way. Representatives from relevant statutory bodies, such as the Police Service of Northern Ireland, the Probation Board, the Youth Justice Agency and the Health and Social Care Trusts sit on this board. The statute also provides between three and five places for independent voluntary organisations and three places are currently being taken up by the NSPCC, Barnardo's Northern Ireland and the Children's Legal Centre. Two of their priorities are children who go missing and child sexual abuse, which are of general relevance to trafficked children.
62. In September 2011 Barnardo's in Northern Ireland published '*Separated children and child trafficking in Northern Ireland: Believe in Children*'. This recommended that the Safeguarding Board for Northern Ireland should have strategic oversight to ensure appropriate inter-agency safeguarding processes and frameworks are in place and are working effectively for separated and trafficked children. This has yet to happen although there are some current developments.

Conclusion

63. This proposal aims to summarise the key issues concerning the present operation of the NRM with regards to child victims of trafficking. It proposes a new approach to identifying child victims of trafficking that is based on multi-agency working and information sharing. It is a statutory model that puts a child's best interests and victim rights at the heart of any decision, removing the conflation with the asylum system in many cases, and is embedded within existing child protection systems. In this way, it does not seek to 'reinvent the wheel' and incur significant costs – instead, by building on existing child protection structures that are proven to work well, we seek to provide a cost-effective approach that decentralises the NRM process.
64. Low awareness of child trafficking and its indicators has been a persistent issue among local authorities and other local actors – one that has led to failures to identify and subsequent safeguarding failures. This proposed children's NRM model is one that gives more power at a local level to those working more directly with a potential child victim – although it is imperative that those involved in the decision-making should be sufficiently and adequately trained in order to undertake such safeguarding decisions. It would empower those at a local level to take responsibility for decisions and should increase the specialism, knowledge and understanding of trafficking at that crucial level, which should provide a fuller and more detailed national picture in order to improve the UK's response to human trafficking and modern-day slavery.
65. It is the ATMG's opinion that the NRM can have a broader role beyond its main function to identify victims of trafficking and modern slavery. An effective NRM can improve national policies and procedures on a broad range of victim-related issues, such as immigration, victim compensation and witness protection through training and capacity-building measures and improved awareness at all levels of society, from the public to frontline workers and the government.
66. Most importantly, by including all relevant statutory and non-statutory agencies in the decision-making processes, including specialists within civil society (which often holds key information that gets lost in the existing process), it is predicted that the quality of decisions and scrutiny of them would improve. This would ensure the UK meets its legal obligations to identify and support children who may have been trafficked and would ensure that the identification of a trafficked child is embedded within existing child protection structures and assessments, prioritising the child's best interests and long-term outcomes, increasing intelligence on child trafficking and improving the child's experience of the NRM.

Authored by:

- **NADINE FINCH, BARRISTER** (GARDEN COURT CHAMBERS)
- **CHLOE SETTER, HEAD OF ADVOCACY, POLICY & CAMPAIGNS** (ECPAT UK)

For more information please contact **Chloe Setter** on **0207 6072135** or **c.setter@ecpat.org.uk**.

The Anti-Trafficking Monitoring Group monitors the UK's compliance with, and implementation of, the 2005 Council of Europe Convention on Action against Trafficking in Human Beings, as well as the EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. The ten organisations belonging to the ATMG are:

AFRUCA (Africans Unite Against Child Abuse)

Amnesty International UK

Anti-Slavery International

Bawso

ECPAT UK

Helen Bamber Foundation

Kalayaan

POPPY Project (of Eaves Housing for Women)

TARA project (Trafficking Awareness Raising Alliance, of Community Safety Glasgow (CSG))

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