

Written submission by the Anti-Trafficking Monitoring Group to the European Commission on the UK's implementation of the EU Directive (2011/EU/36)

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 eleven organisations belonging to the ATMG are:

AFRUCA (Africans Unite Against Child Abuse)
Amnesty International UK
Anti-Slavery International
Bawso
ECPAT UK
Focus on Labour Exploitation (FLEX)
Helen Bamber Foundation
Kalayaan
POPPY Project (of Eaves Housing for Women)
TARA project (Trafficking Awareness Raising Alliance, of Community Safety Glasgow (CSG))
UNICEF UK

Introduction

The UK's report, though helpful and informative, fails in some areas to provide sufficient details and remains on a very general level. For example, at page 21, under 'Outcome' the report states the following; "potential victims receive support in line with our international obligations. The support provided includes assistance with return and reintegration..." The report does not provide any further details about the return and integration programmes, nor the number or outcomes for those victims who have been returned or reintegrated. It would be beneficial if further information could be provided by the UK where necessary to allow for a comprehensive assessment of the measures taken by the UK to meet its obligations under EU Directive 2011/36/EU.

Specifically, at p.24 of the UK's report under 'Outputs', it states 'We have not published an evaluation of the Modern Slavery campaign', yet under 'Outcomes' lists the findings of the evaluation including that 'During the period of the campaign the hotline received 591 contacts'. Given the significant funds that have been spent on the Modern Slavery campaign (see further details on p. 10 below) we would request that the UK both share with the European Commission and make public the findings of this internal evaluation.

PART 1: ASSESSMENT OF TRENDS IN TRAFFICKING IN HUMAN BEINGS

Measure: Assessment of THB trends

ATMG research published in 2013¹ found that the **statistics currently collated on the UK's Criminal Justice System response to trafficking are confusing and potentially misleading**, as two departments gather different statistics on trafficking prosecutions and convictions: a) the Ministry of Justice (MoJ) collects data on convictions and prosecution of trafficking where the trafficking offence charged is the principal offence on the indictment; and b) the Crown Prosecution Service (CPS)

¹ ATMG, 'In the Dock', June 2013.

http://www.antislavery.org/includes/documents/cm_docs/2013/i/in_the_dock_final.pdf

collects data from their case management system where cases with a trafficking offence charged are flagged even if other offences are later convicted.

For the CPS, this enables the tracking of cases that have been brought using a trafficking offence, even if the final conviction is for other offences. The CPS case management system indicates that general conviction rates for traffickers from flagged prosecutions are higher than the MoJ statistics. This data combines both sexual and non-sexual trafficking. In 2010, out of 103 cases which included trafficking charges and a combination of other offences, 73 resulted in a conviction (70.9% success rate); 139 in 2011, 94 out of 142 prosecutions resulted in a conviction (66.2% success rate); and in 2012, 78 cases out of 111 resulted in a conviction (70.3% success rate)². However, information on the specific offences for which these traffickers were convicted is omitted, as the statistics are not publically disaggregated.

Taking the year 2010 for instance, 70 of the cases may have resulted in the traffickers being convicted of prostitution-related offences, with 16 convicted under trafficking offences, 10 assaults and 7 rapes. Conversely, there could be 70 rapes and 16 trafficking offences and 17 prostitution-related offences. A breakdown of the information has not been made public, making it difficult to analyse the effectiveness of this approach and to assess whether traffickers are receiving proportionate sentences.

The current dual system of data collection on prosecutions and convictions of traffickers gives an inaccurate and potentially misleading picture on how successful the UK is in tackling trafficking. The result is a situation where different statistics are presented by different departments, leading to an uncertainty over the number of perpetrators actually brought to justice for trafficking.

Furthermore, there is no specific data on offences against children, or those who were children at the time of the offence, which makes it impossible to know how many child traffickers have been prosecuted or convicted.

In cases where an individual is convicted or prosecuted under 'other' relevant legislation for children, such as child neglect or child sexual offences legislation, it is not routinely documented whether trafficking was part of the context of the crime.

One of the reasons given by UK Government for maintaining the tied visa system for **Migrant Domestic Workers in the UK** (on the Overseas Domestic Worker visa) despite widespread reports of increased abuse and concern for a system, which so increases the dependency of a worker on their employer, is the low levels of data available. In spite of this the UK Government appears to have made no efforts to monitor the treatment of migrant domestic workers in the UK. To date the only data on the treatment of migrant domestic workers is produced by Kalayaan, an ATMG member and charity which offers support and advice to migrant domestic workers. Kalayaan collates data based on reports of abuse made by migrant domestic workers who register with them.

In the three years since the introduction of the tied visa system for migrant domestic workers reports made to Kalayaan have consistently shown a higher level of restrictions of the worker's freedom and of control by employers. Since the tied visa was introduced in April 2012³, meaning that workers enter on a visa which cannot be renewed beyond six months and on which the worker cannot work for anyone other than their employer, whose name is written on their visa, Kalayaan has registered 590 new workers. Of these 184 have been tied to their employer, either because they entered on the tied visa or because they entered in the employ of diplomats, also meaning that they are tied. For example:

² Supra note , p.39

³ Period covered is 6 April 2012 to 31 March 2015 and looks at the reports of a total of 590 workers, 184 of whom are tied and 406 who entered on the original visa or who have ILR.

- Over a third more, proportionally, of those on the tied visa reported not being allowed out of the house unaccompanied, compared to those who were not tied. (66% (120/182) compared to 41%(148/ 357))
- Proportionately, nearly double those who were tied to their employers reported having no space of their own or privacy in the house in which they lived and worked, so often sharing a room with the children or sleeping in the kitchen or living room (61% (106/173) of those tied compared to 33% (113/340) not tied)
- 81% (130/161) of those who were tied reported no time off compared to 66% (213/322)of those not tied
- 74% (131/177) of tied workers reported their passport being kept from them compared to 50% (183/367) not tied
- Kalayaan staff internally identified 64% (113/176) of those tied to their employers as trafficked compared to 25% (91/364) of those not tied.

While abuse of both categories of migrant domestic worker is shockingly high, the last three years show that workers who are tied to their employers are consistently reporting higher levels of abuse and mistreatment, including indicators of trafficking.

There is still insufficient data collection about traffickers. The UKHTC assessments provide almost no information about traffickers. There are also few qualitative assessments about trafficking besides those prepared by civil society. While the UKHTC assessments provide many more details on, for instance, different types of exploitation than before, their purpose is not to provide in-depth analysis of the issues.

PART 2. MEASURING OF RESULTS OF ANTI-TRAFFICKING ACTIONS

2.1.1 Criminal law, Investigation and prosecution

ATMG research published in 2013 examined the effectiveness of trafficking investigations and prosecutions through the UK Criminal Justice System in terms of law, policy and practice between April 2009 and November 2012.

The resulting report⁴ highlights several successful landmark cases investigated by the police and other law enforcement agencies. However, there was also recognition that this is not the case across the UK, as the overall law enforcement capacity to respond to trafficking remains low. The culture of policing targets means that trafficking is not considered a priority and an investigation is often dependent on the good will and perseverance of individual officers. There is also a lack of tailored training to equip law enforcement officers with the specialist knowledge to effectively investigate this crime.

Worryingly, the majority of respondents confirmed that trafficked persons are frequently refused assistance when presenting at police stations and are told that their problem is not a police matter, especially in instances of labour trafficking. Undoubtedly, the fewer trafficked persons identified will inevitably result in fewer potential cases investigated and ultimately fewer traffickers convicted, thus perpetuating the criminal groups activities. Where specialism is developed or specialist anti-trafficking units have been formed, trafficking has been tackled with greater success. Moreover, in

⁴ See Supra note 1

the climate of austerity and cuts, focused and proactive anti-trafficking operations can be cost-effective.

The ATMG's research found that where large-scale trafficking operations against traffickers for forced criminality (such as petty theft and begging) were carried out, this also curbed the occurrence of low level crime. Also, operations which proactively dismantle the whole trafficking network are more effective than a temporary disruption of its activities, which can result in not just financial savings in the CJS, but also on funding victim care. Such operations are also more likely to recover substantial assets (proceeds of crime) from traffickers where a financial investigator is involved from the beginning of the

Prosecuting traffickers

The Modern Day Slavery Act (2015) and the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 aimed to consolidate existing trafficking and forced labour, as too does the recently introduced Human Trafficking and Exploitation (Scotland) Bill. Given their recent introduction, rates of prosecutions under the new legislation in England, Wales, and Northern Ireland are unavailable.

The ATMG's published research in 2013 on UK trafficking investigations and prosecutions was undertaken prior to the introduction of this legislation. The research found that across the UK trial success depends on the level of trafficking knowledge that the CPS lawyers/prosecuting advocates and judges have, as well as the support afforded to a trafficked person who is participating in the proceedings. Until a combination of adequate victim-witness support and protection, and competent presentation and handling cases in court is achieved, many traffickers will continue to enjoy impunity.

The research found a lack of knowledge and understanding of trafficking and how it impacts on trafficked persons across prosecutors and the judiciary, potentially impacting on the positive outcome of cases. Research contributors suggested the development of specialist prosecutors for trafficking cases, similar to those who are accredited to prosecute rape cases. The research also revealed that despite the importance of victim support and protection measures for a successful prosecution, these are often not in place. Interviewed respondents stated that trafficking trials may have collapsed due to poor victim support/contact or due to the trafficked person having suffered secondary victimisation due to invasive questioning.

And despite measures to protect child victims in court, the credibility and consent of child victims to their travel and exploitation is still used by the defence to undermine the prosecution's case. It is inappropriate that the principle of children not being able to consent to their exploitation is not applied in practice in many cases.

Children being considered unreliable or weak witnesses in prosecution cases also results in fewer prosecutions involving children. There has also been considerable criticism of the way in which children are cross-examined, often by multiple lawyers in cases involving more than one suspect⁵. In one case, such intense cross-examination of a child caused such distress that her evidence was withdrawn⁶.

A serious case review into the high-profile case of trafficking and child sexual exploitation, in Rochdale, North West England, strongly criticised the response of authorities to the large-scale

⁵ See: <http://www.theguardian.com/law/2013/may/19/lawyers-oxford-abuse-ring>

⁶ See ATMG, 2013 In the Dock, p114

abuse of children in the town. Criticism included the use of police staff who had no specialist training to investigate the allegations, discrimination towards the children and a lack of interest from police regarding protection of the children⁷.

In Scotland, the Director General of the Scottish Crime and Drug Enforcement Agency (SCDEA) is responsible for anti-trafficking across policing in Scotland. Scotland now has a single police force – Police Scotland, which has a National Human Trafficking Unit (NHTU) (under the auspices of Public Protection) who can provide specialist advice and support to law enforcement officers across Scotland. The Crown Office and the Procurator Fiscal Service (COPFS) are responsible for decisions on whether to prosecute and conduct criminal proceedings. The Trafficking Awareness Raising Alliance (TARA) project provides expert services to adult women trafficked for sexual exploitation, whereas Migrant Help are funded to assist all other trafficked persons.

Whilst there has been progress in Scotland, most notably with SCDEA's pioneering effort to integrate the Scottish law enforcement response to this crime, there is a challenge for the new Police Service of Scotland, the COPFS, and ultimately the Scottish Government, to retain and enhance this approach. Further, enhanced cooperation would reflect the formal involvement of those responsible for assisting victims, presently TARA and Migrant Help, which can only promote a specialisation and victim-centred approach resulting in an effective criminal justice response to trafficking in Scotland. Victims are, unfortunately, at the centre of trafficking so, it follows, in principle and in practice that they should be at the centre of how we respond to it⁸.

In Northern Ireland, the Police Service in Northern Ireland (PSNI) is the primary source for the investigation of trafficking cases and trafficking is included in the 2012 - 2015 Policing Plan⁹. All cases of crime are reported to local district police who will investigate and if there is an organised crime group element it will be referred to the Organised Crime Branch (OCB) who decide to commission the investigation. If there is a child or other issues including vulnerability, then it can be referred to Public Protection Units (PPU) within the PSNI.

Most research participants agreed that when cases are investigated by officers within the OCB, they are handled sensitively and with a high degree of specialism. But criticism remains about the handling of trafficking cases by frontline officers. However, there is an overall perception that there is a lack of investigations resulting in low numbers of trafficking convictions.

It is clear that the scope for a successful prosecution by the Public Prosecution Service for Northern Ireland (PPS), in relation to trafficking and related offences, is intertwined with the PSNI ability to respond to trafficking. The PPS can only act upon the cases that are referred to it by the PSNI and if the police are failing to identify and fully investigate trafficking cases, this will impact upon the volume and outcome of cases the PPS can consider. The evidence obtained at the outset by any individual law enforcement officer is critical and if this is incomplete or of poor quality then this makes the job of the prosecutor more difficult.

While the PPS can only work with the referrals provided, there remains a considerable gap between the number of trafficked persons identified since implementation of the NRM and the number of trafficking convictions of traffickers prosecuted when compared to the rest of the UK. Therefore, the

⁷ <http://www.rochdaleonline.co.uk/news-features/2/news-headlines/84442/child-sexual-exploitation-serious-case-review-slams-police-and-council>

⁸ For further detail on trafficking investigations and prosecutions in Scotland, see Supra note 1, p.129-134

⁹ The Northern Ireland Policing Board and the Police Service of Northern Ireland, Policing Plan 2012 - 2015, found at: www.psni.police.uk/policing_plan_2012_-_2015.pdf.

PSNI must also take responsibility in relation to identifying and fully investigating trafficking to ensure the best evidence is obtained at the earliest possible opportunity, as robust criminal investigations are more likely to secure convictions.

Sentencing also attracted significant criticism in NI with most research participants considering the sentences as too lenient, with some asking what it takes for a trafficker to be sentenced to the maximum imprisonment¹⁰.

Non-criminalisation of trafficked persons

The research pointed to many instances where trafficked adults and children were misidentified as offenders, and were subsequently prosecuted and convicted. The continued criminalisation of trafficked persons (including those who were trafficked for drug offences and those who were given false documents by their traffickers) was raised as a widespread problem by respondents¹¹.

The ATMG concludes that the current regime in which non-criminalisation provisions are implemented through policy (e.g. CPS guidance) allows for the arbitrariness of decisions that lead to many trafficked persons being prosecuted, hence undermining basic principles of rule of law. There are a range of professionals that come into contact with trafficked persons within the CJS. The research identified at least seven stages of the process at which identification can arise. If identification occurs at an early stage, especially during the pre-charge period, the criminalisation of trafficked persons can be prevented and the CJS can focus on the underlying problem – the crime of trafficking. However, the research found that the identification of trafficked persons often occurs at a very late stage in the process i.e. post-conviction.

The Modern Slavery Act 2015¹² and the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015¹³ both contain a defence for victims in relation to certain offences (if the offence committed was integral to their exploitation). There has been criticism of the drafting of this defence, because it contains a list of exceptions (offences where the defence cannot be used). In addition, the Modern Slavery Act includes a 'reasonable persons test', even for children, which introduces an element of compulsion that should not have to be proven in children's cases and may mean children's credibility and consent is questioned in court.

Notwithstanding these criticisms, the inclusion of a statutory defence is welcome. The ATMG was however disappointed that the Acts did not contain a statutory principle of non-prosecution, to work alongside the defence. The statutory defence is important as a last line of defence, should the case reach court before the victim is identified as such, however a statutory principle of non-prosecution would help ensure that authorities are aware that victims must not be prosecuted, detained or

¹⁰ For further detail on trafficking investigations and prosecutions in Northern Ireland, see Supra note 1, p.120-129

¹¹ Further research on extent of the criminalisation of victims in the UK has been documented in the 'RACE in Europe project' report published in September 2014 entitled- 'Trafficking for Forced Criminal Activities and Begging in Europe: Exploratory Study and Good Practice Examples'
http://www.antislavery.org/includes/documents/cm_docs/2014/t/2_trafficking_for_forced_criminal_activities_and_begging_in_europe.pdf

¹² <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted/data.htm>

¹³ <http://www.niassembly.gov.uk/assembly-business/legislation/current-non-executive-bill-proposals/human-trafficking-and-exploitation-further-provisions-and-support-for-victims-bill-/human-trafficking-bill-amended-at-cs/>

punished at a much earlier point, resulting in earlier identification and thus avoiding further traumatisation of the victim¹⁴.

Specific issues relating to child trafficking

There was a general consensus among interviewees that child trafficking has a lower profile than adult trafficking which may affect prosecution numbers. There are also distinct barriers to identifying trafficked children in frontline practice, primarily due to a lack of mandatory training of child protection professionals on child trafficking and a failure to understand the nature of exploitation and a child's inability to consent, particularly for older teenagers. Investigating and prosecuting child trafficking can be more complicated. Children generally do not report crime, especially against family members. It is for these reasons that the Convention obliges frontline competent authorities to be proactive in identifying trafficked children. The research found that some stakeholders are reticent to allow trafficked children to participate in trafficking investigation or prosecutions, because this may not be in the child's best interests due to the potential detrimental impact on an already vulnerable child giving evidence in court. Therefore, this limits the number of convictions where the child's testimony is crucial to the prosecution. Other complications result from a failure by concerned agencies to adhere to the benefit of the doubt principle when age assessing age-disputed children. The key principles of best interests, non-discrimination and the child's rights, as contained in the Convention and Directive, must be adhered to at all stages of a criminal investigation into child trafficking. Furthermore, child trafficking is child abuse: this is a message that must be central to the UK's criminal justice response to trafficking in order to successfully safeguard vulnerable trafficked children while delivering justice to those who seek to exploit them.

Measuring the result of financial investigations

All offences in the Modern Slavery Act 2015, Human Trafficking and Exploitation (Scotland) Bill and Northern Ireland Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act 2015, including the offence of slavery, servitude, forced or compulsory labour, are to be listed as a 'lifestyle offence' under Schedules 2, 4 and 5, respectively, of the Proceeds of Crime Act (POCA) 2002.

The Modern Slavery Act 2015 and Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 include reparation orders for trafficking and slavery offences, which require the perpetrator to pay compensation to the victim for any harm resulting from that offence. We hope that the Human Trafficking & Exploitation (Scotland) Bill currently before the Scottish Parliament will contain a similar provision.

2.1.2 Assistance and support (Including Protection)

Measuring the result of National Referral Mechanisms or other coordination mechanisms

In February 2014, the ATMG published a 'Five Year Review' of the NRM¹⁵, which provides an analysis of the operation of the NRM since its inception in 2009 using case evidence and comments from ATMG member organisations and the findings of previous ATMG research.

The report found the following key issues with the NRM:

¹⁴ The Human Trafficking and Exploitation (Scotland) Bill, introduced in December 2014, states that the Lord Advocate must make and publish guidelines on the prosecution of victims of trafficking and exploitation.

¹⁵ ATMG, National Referral Mechanism: A Five Year Review. February 2014

http://www.ecpat.org.uk/sites/default/files/atmg_national_referral_mechanism_a_5_year_review_email.pdf

Failure to identify: The number of official First Responder agencies has increased since 2009 but not all statutory or relevant voluntary sector agencies are recognised NRM First Responders. Legal representatives, medical professionals, nor staff working in the prison estate, can directly refer their clients into the NRM gateway. Victim-care and support organisations outside the official list have to navigate their way through the system without having an official status as First Responder.

Victim-support organisations continue to report cases to the ATMG where the Home Office's own First Responders as asylum screening units fail to spot trafficking indicators during asylum screening interviews, often the first interaction with authorities. Furthermore, the asylum screening interview questionnaire has no questions specifically designed to elicit information about potential trafficking.

Detained Fast Track: An increasing number of victims being placed in Detained Fast Track, which is recognised in Home Office guidance as unsuitable for trafficking victims. Trafficked people who were not part of a 'rescue' operation might come into contact with authorities when they were arrested for immigration offences. Enforcement action relies on those who are trafficked to disclose their status quickly or face detention. Those who did not report that they were trafficked at the point of arrest or detention would find they were not subsequently identified as trafficking victims with late disclosure being taken as a credibility issue rather than an aspect of many trafficking victims' trauma.

Inconsistency in decision-making: The Anti-Trafficking Monitoring Group has previously reported on the inconsistency of decision-making across the two NRM Competent Authorities (CA). Whether taken on an annual, or quarterly basis the analysis of data on positive decisions shows that the UK Human Trafficking Centre has a significant higher rate of positive decision-making than the Home Office UKVI (formerly UKBA)- 80%-20%.

Discrimination in decision-making: The ATMG is extremely concerned about a widespread culture of disbelief in the Home Office decision-making process and how it impacts on the successful identification and support of victims. We recognise that some aspects of this can be addressed through a process of continual training, but there is an underlying issue that points to systemic discrimination and we think is driven by a particular approach to assessing credibility. In 2010 the ATMG found that the disproportionate focus on credibility in determining trafficking status by the Home Office CA was wrong. In ATMG research in 2012 and 2013 this was the same. The majority of service providers reported that the Home Office CA systematically makes findings on credibility to justify negative decisions.

Professional disregard: First Responders highlight the adversarial way in which the staff of Home Office CA are expected to make decisions about victims of trafficking that often places them in direct opposition to the professional opinion of First Responders and specialist victim support organisations who work with victims of trafficking every day. When this happens over and over the level of trust in the system diminishes. When a Competent Authority makes a decision about an individual person's credibility as a victim they are also making a judgement about the ability of the First Responder and their competence to identify victims. To make these judgements without even conferring with the First Responder is even more incredulous, yet it happens frequently. Case analysis shows that greater weight is given to the opinion of police officers than that of specialist victim support services.

Conflation of NRM and Asylum Procedures: The question of whether someone is a victim of crime and entitled to assistance under the NRM should be distinct from whether or not that person has a valid claim for asylum and international protection. But it appears that the Home Office Competent Authority is treating these two issues as part of one process and postponing the

NRM decisions until after the asylum decision. The asylum decision is often made irrespective of the 45 day reflection period. As a result, trafficking victims are not benefiting from the reflection period and assistance they are entitled to. Although it might appear efficient for one case worker to decide on two separate issues, there is a real risk that the trafficking decision will be wrong. Firstly the questions to be asked by the case worker are different; in the case of trafficking, the question is whether the person has been trafficked. On the question of asylum, the case worker has to decide whether the person has a well-founded fear of persecution. The standards of proof in connection with these distinct questions differ.

Lack of access to a formal appeal: 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 ATMG conducted further research to examining the NRM in practice for children. The NRM for children has been widely criticised as its non-statutory approach does not fit with the established statutory approach to identifying other forms of child abuse. In addition to the issues raised above the research found:

- Low awareness of the NRM system and child trafficking indicators/definition/profiles among First Responders in particular
- Low referral rate among some local authorities that see little purpose in the NRM for children
- 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
- Lack of child-specific training and child protection specialism among case owners in the Competent Authorities
- Lack of multi-agency input in the decision-making process and failure to embed the process in child protection procedures
- 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
- Little known on the impact of NRM decisions on children in the short and long term
- Lack of input by the child into the NRM process and a lack of understanding of the NRM
- Lack of long-term evaluation of the NRM and support for child victims of trafficking

Given these concerns the ATMG welcomed and engaged with the UK's review of the National Referral Mechanism, which published its final report in November 2014¹⁶. Whilst we are supportive of a number of the review's recommendations, including that the professionalisation of the first responder role and support provision for victims based on an assessment of the individual needs of the victim, others were not felt to be reflective of the evidence submitted to the review.

In particular, the review resulted in very few recommendations for children, recommending that the proposed NRM system should mirror that of adults i.e. the NRM should be a separate system

¹⁶<http://webarchive.nationalarchives.gov.uk/20141202113128/https://nrm.homeoffice.gov.uk/documents/2014/11/nrm-final-report.pdf>

created a distinct system for identifying and supporting both adult and child victims of trafficking, rather than being embedded it within existing child protection systems. This recommendation contradicts the evidence submitted to the review by the ATMG and other anti-trafficking organisations that highlights the importance of using the existing multi-agency child protection systems in place so that trafficking, which is child abuse, is not just seen as an 'add-on' or supplementary issue¹⁷.

The Review of the NRM also did not recommend that there should be a formal right of appeal; it was argued that it would be unnecessary as the new NRM process proposed will have a 'high level of independent scrutiny and multi-disciplinary decision-making'¹⁸. However, no system that involves human decision-making will be without error. As such there is no realistic guarantee that the new improved system will be problem-free, particularly in the revised system's initial stages.

An appeal would also provide a degree of independent oversight and allow for the constructive appraisal of decisions overturned on appeal, thereby allowing for continued improvement in processes.

2.1.3 Prevention

Measuring the result of Information and awareness-raising campaigns, including to curb demand.

In July 2014, the Home Office launched a major campaign aimed at raising public awareness of modern slavery. The campaign included a TV advert alongside, a dedicated website¹⁹ showing people the signs to look out for, and a helpline for the public to report their suspicions. The budget for the entire campaign is £2.3 million²⁰, £44,000 of which was spent on the Modern Slavery website²¹. Given the significant funds that have been allocated to this campaign, the findings of the campaign's evaluation (which is reportedly to include monitoring of the reports made of potential incidences of modern slavery and a pre and post campaign survey of 2,000 adults to measure shifts in awareness, attitudes and claimed behaviour²²), should be comprehensive and widely distributed.

Measuring the result of Training and Education Programmes

Research undertaken by the ATMG in 2012 to look at the work being undertaken by the UK to prevent trafficking²³ found that, despite the considerable efforts to create resources and frontline workers, many practitioners interviewed for the research were concerned that training is not always reaching those frontline professionals who are best placed to identify trafficking. Several areas were identified where it was stated that frontline workers are not as aware of trafficking as they should be. These areas included health professionals and housing providers, as well as those working within local authorities and neighbourhood policing teams. The research also found that the training of

¹⁷See the ATMG's Proposal for a revised NRM for children', Sept. 2014
http://www.antislavery.org/includes/documents/cm_docs/2014/a/1_atmg_national_referral_mechanism_for_children_email.pdf

¹⁸ Supra note 9, para 8.2.16

¹⁹ <https://modernslavery.co.uk/>

²⁰ <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2014-10-30/212702/>

²¹ <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2014-10-15/210663/>

²² Supra note 14

²³ All change: Preventing trafficking in the UK', 2012-
http://www.antislavery.org/includes/documents/cm_docs/2012/a/atmg_all_change_prevention.pdf

professionals commonly relied on individual initiative, rather than it being embedded within a consistent strategy of the relevant government department. Furthermore, unlike the police or the UK Border Agency (UKBA), social work, education and health teams often rely on training provided by non-governmental organisations (NGO) to bring in specialist knowledge.

A body responsible for coordinating training either regionally or across the UK, or for evaluating existing training and education packages is absent. It is left to agencies to try to plug gaps in their training when they identify them. Furthermore, several people stated that trafficking awareness-raising and training often takes place at the instigation of an individual within an organisation, rather than being rolled out strategically. One approach to rectifying this may be to make these responsibilities post-specific, instead of relying on individuals to instigate and proactively pursue training for their organisation/department. Concerns were raised about the sustainability of such an ad-hoc approach to training and many stressed the importance of developing organisational knowledge. The majority of participants interviewed stated that the Government needs to prioritise trafficking and fund training so that it can reach all relevant professionals. To facilitate the training of practitioners, the Government should produce a directory of training opportunities and providers, which would avoid confusion as to where practitioners can access such resources.

Child trafficking

There is no mandatory training of relevant professionals on child trafficking. This is a particular problem with regards to local authority children's services social workers, who frequently lack any knowledge on the indicators of child trafficking, the rights of victims, ongoing risks and how to safeguard this cohort of children effectively. It is routine that social workers (along with other statutory agencies, such as the police, immigration) are not aware of the National Referral Mechanism (NRM), how it works, its purpose or even that they are 'First Responders' in this system and should refer suspected child victims. Training for police consists of a mandatory e-learning course on human trafficking but it does not have a specific focus on children.

A lack of trafficking knowledge among professionals who have a statutory duty of care to children has led to safeguarding failures – such as a failure to identify children as potentially trafficked, a failure to understand the risks to these children (even once identified), risks of going missing and re-trafficking. Government-commissioned research has revealed a 'culture of disbelief'²⁴ for trafficked children, particularly around immigration and age, which can reduce a child's likelihood of disclosure about their abuse.

Awareness-raising and education about child trafficking has been very limited and focused chiefly on the grooming of young girls into sexual exploitation. Through the ATMG's research it was revealed that the demand for African or Asian children, who are trafficked for domestic servitude within their own community, is often stated to be too 'culture bound' and thus off-limits for some professionals to discuss. Without open and frank discussion about these issues, the abuse becomes shielded from scrutiny and results in its perpetuation. The extent of child victims of trafficking for domestic work and forced criminality, such as pickpocketing, theft, cannabis cultivation, DVD selling, and begging, has not been addressed in any government-sponsored education campaign or in school curricula.

Legislative measures on prevention and to discourage demand

²⁴ Refugee Council and The Children's Society: Still at Risk? 2013
http://www.childrensociety.org.uk/sites/default/files/tcs/still_at_risk_-_full_report_-_refugee_council_the_childrens_society.pdf

Overseas Domestic Workers

In 1998, the government introduced the domestic worker visa in response to widespread concern at the well-documented levels of abuse and exploitation of Migrant Domestic Workers (MDW). This gave MDWs the status of workers for the first time and the right to change employer. However, in April 2012, changes to the Immigration Rules tied migrant domestic workers entering the UK to their employers. Domestic workers who applied for a visa to come to the UK with their employer enter on a 6 month non-renewable visa and are prohibited from changing their employer. These changes deny them a viable escape route from abuse and exploitation and place them at greater risk of trafficking. Migrant domestic workers are also unable to challenge any mistreatment and seek redress for abuse suffered. Domestic workers in diplomatic households are also prevented from changing their employer but can remain in the UK for 5 years. Rather than increasing protection against trafficking, migrant domestic workers are at greater risk as a result of April 2012 changes. Research by Kalayaan²⁵, Human Rights Watch²⁶ and others have shown that the levels of abuse suffered by domestic workers on the tied visa is greater than suffered by those on the 'original' visa.

Domestic workers on the tied visa who become undocumented through escaping their trafficker who is their employer under the terms of their visa are at further risk of re-trafficking and re-victimisation either internally in the UK or in their country of origin if they are returned there. The original visa provided protection against this risk by permitting victims to find other legal work to support themselves and dependent family member.

While an amendment to the Modern Slavery Act, which would largely restore the rights removed from domestic workers in 2012, was passed in the House of Lords, it was defeated in the House of Commons. The government argued that granting migrant domestic workers the right to change employers would act as a disincentive to them reporting their trafficking experiences to the police. However, no evidence was produced to support this and there have been no prosecutions for trafficking for domestic servitude in the 3 years since the introduction of the tied visa (which prohibits migrant domestic workers from changing their employer).

While the final Act does contain provisions relating to migrant domestic workers, it is unclear what impact if any they will have in combating trafficking for domestic servitude and protecting the victims. The Bill stipulates that the immigration rules must make provision for leave to remain in the UK for migrant domestic workers who have been determined to be victims of modern slavery and the rules must specify a period of not less than 6 months. It is not clear how this will work in practice as it has now yet been set out in the rules. However, it is difficult to see how this can increase protections for victims of trafficking given that a discretionary residence permit exists for those cooperating with the police or where there are specific personal circumstances already exists. The Modern Slavery Act also requires that no enforcement action should be taken against a migrant domestic worker who because of reasons related to slavery or trafficking remains in the UK beyond the time of the times of his/her leave to remain or breached the conditions of his/her visa. This provision does not significantly improve existing practice where victims of trafficking are not removed while they are in the National Referral Mechanism process.

The denial of the right of domestic workers to change employer or renew their visa increases their vulnerability and their employer's power over them, leaving them more susceptible to trafficking. The

²⁵ <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/tied-visa-20141.pdf>

²⁶ Human Rights Watch, March 2014, 'Hidden Away: Abuses against Migrant Domestic Workers in the UK' <http://www.hrw.org/node/124191>

Modern Slavery Act 2015 represents a wasted opportunity to put in place statutory measures to prevent abuse of domestic workers. Prior to the visa change in 2012, a domestic worker could have left their employer *prior* to them being abused; the post-2012 visa and now the Modern Slavery Act stipulate that the domestic worker will only be afforded protections once they have suffered abuse.