

The National Referral Mechanism

This fact sheet is for those working with children and young people who have been trafficked in or into the UK. It explains the National Referral Mechanism – the framework for identifying victims of trafficking.

If you have any questions about trafficking you can call our Migrant Children's Project advice line on 0207 636 8505 or email mcp@coramclc.org.uk.

What is the National Referral Mechanism?

Following the United Kingdom Government's ratification of the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT), which came into force on 1 April 2009, the Government is committed to minimum standards for the protection of victims of human trafficking. [1] Article 10 of ECAT requires public bodies to identify victims of human trafficking. The United Kingdom implemented this requirement, at least in part, by creating the National Referral Mechanism (NRM). This means there is a particular process to be followed when it is suspected that an adult or a child might be a victim of trafficking. In the case of a child, the child's best interests will be a primary consideration in the decision to make, or not to make, a referral into the NRM.

There has been criticism of the NRM and following a 2014 review the Home Office recommended proposals for change in order to improve on the current system. Changes included an overhaul of the referral process and testing the use of multi-disciplinary panels to identify child victims of trafficking. [2]

The government also published a Modern Day Slavery Strategy in November 2014 [3] and passed the Modern Slavery Act 2015 [4].

Referral into the NRM by a first responder

Referrals into the NRM can only be made by selected agencies known as 'first responders'. If you are not a first responder and you believe you have identified a

victim of child trafficking then you will need to refer the child to a first responder in order for them to be referred into the NRM.

First responders are public agencies or other bodies that are recognised in this role, including the police and local authorities. All first responders are undertaking a public function, so should any first responder inappropriately refuse to refer a child into the NRM (for example refusing where this is not compatible with the best interests of the child) then a challenge could be brought against the refusal by judicial review in the High Court.

The following are currently recognised as first responders:

- The National Crime Agency
- Police forces
- UK Border Force
- UK Visas and Immigration (Home Office)
- Gangmasters Licensing Authority
- Local authorities
- Health and social care trusts (Northern Ireland)
- Salvation Army
- Migrant Help
- Medaille Trust
- Kalayaan
- Barnardo's
- Unseen
- TARA Project (Scotland)
- NSPCC Child Trafficking Advice Centre
- BAWSO (Wales)
- New Pathways
- Refugee Council

The referral of a potential victim of trafficking into the NRM by a first responder involves completing a referral form in which the evidence for believing the person is a victim of trafficking is summarised. There are separate forms for the referral of adults and for the referral of children. [5]

In children's cases, it is not necessary to obtain a child's consent to refer them to the NRM. Although it would always be good practice for children to have consented to referral, in practice this could inhibit the identification of children who have been trafficked where fear of their traffickers has prevented them from acknowledging the fact.

Under section 52 of the Modern Slavery Act 2015, public authorities, such as local authorities and the police, are under a duty to notify the Home Office if they believe that someone may be a victim of modern slavery. Although the duty to notify applies to both children and adults, as children do not need to consent to enter the NRM, specified public authorities agencies should generally complete a full NRM referral rather than a notification. This enables fuller information gathering and assessment of the case to be completed. [6]

The National Crime Agency has produced a brief best practice guide for appropriately interviewing victims of trafficking. [7] The Home Office has also produced leaflets providing information in brief about trafficking and the support available in a number of different languages. [8]

The reasonable grounds decision

The referral will be assessed by what is known as a 'competent authority'. In the UK the designated competent authorities are:

- The Modern Slavery Human Trafficking Unit (MSHTU), which sits within the National Crime Agency and deals with referrals from the police, local authorities and NGOs.
- UK Visas and Immigration, which sits within the Home Office and deals with referrals identified in the immigration process. [9]

All completed referral forms should first be sent by First responders to the MSHTU, which then assigns a competent authority. The competent authority will consider the referral. Under the co-ordination of Local Safeguarding Children Boards, local authorities and partners should work very closely with the competent authority to ensure all relevant information is considered before any decisions are made on whether a child is a victim of trafficking.

The local authority children's services department remains responsible for assessing and providing for the needs of a child who is a potential victim of trafficking, including support and accommodation. The competent authority should decide within five working days (this can be extended where necessary) whether or not there are reasonable grounds for believing that the person has been trafficked. This is known as the reasonable grounds decision.

There is a low threshold at this stage: the test is 'from the information available so far I suspect but cannot prove' the individual is a victim of trafficking. If the competent authority decides that there are no reasonable grounds, there is no right of appeal: the only way to challenge this decision is through judicial review in the High Court.

Reflection and recovery period

Where the competent authority considers that there are reasonable grounds to believe that someone is a victim of trafficking, the person will be granted a (minimum) 45-day reflection and recovery period. No action to detain or remove the person can be taken during this time and a full needs assessment should be undertaken to ensure the trafficked person has access to adequate support and recovery services.

For adults, needs assessments are not automatically conducted by the competent authority and must be requested. However, in the case of trafficked children full needs and medical assessments should be undertaken when a referral to children's services is made. This support should not be delayed or reliant on any findings of the NRM.

Conclusive grounds decision

Before the end of the 45-day recovery and reflection period, a competent authority should make what is known as a conclusive grounds decision on whether the person is a victim of trafficking: the test at this stage is whether, on the balance of probabilities, there is sufficient information to conclude the individual is, more likely than not, a victim of trafficking.

In general the MSHTU makes the conclusive grounds decision in cases involving British and European Economic Area citizens and the Home Office makes the conclusive grounds decision in cases where the trafficking decision may affect a person's immigration status.

The Home Office guidance states that the competent authority must make every effort to secure all available information that could prove useful in establishing if there are conclusive grounds. This includes evidence from those supporting the potential victim, the police and local authority. They must also give due weight to the views of the local authority and any organisation supporting the potential victim, as well as take into account any medical reports submitted.

In more complex cases the reflection and recovery period may be extended while a decision is made. As with a negative Reasonable grounds decision, a negative conclusive grounds decision can only be challenged by the process of judicial review in the High Court. Please see our fact sheet for further information on the impact of a conclusive grounds decision on someone's immigration case at www.coramchildrenslegalcentre.com/resources.

Modern Slavery Act 2015

The Modern Slavery Act 2015 came into law on 26 March 2015 and various sections in the Act came into force throughout the rest of 2015. Although the Act focuses on enforcement, there are some relevant provisions in relation to the NRM and victim identification and support.

Part 4 establishes the office of the independent anti-slavery commissioner and sets out the functions of

the commissioner. These include encouraging good practice in identifying victims of trafficking through reports, research, training and consultation. There is also a duty on local authorities to co-operate with the commissioner. However, it is not yet clear the extent of the power the commissioner will have, if any, to have his recommendations enforced or adhered to. The commissioner recently published a strategy to implement a work programme from 2015-2017. [10]

Part 5 of the 2015 Act allows for the provision of independent child trafficking advocates for child victims of trafficking. The 2015 Act also states that the Home Office must provide guidance and regulations on the identification and support of victims of trafficking.

Pilots affecting child victims of trafficking

The Home Office piloted changes to the NRM following recommendations made by the NRM review in November 2014. These recommendations include:

- strengthening the first responder role by creating new 'anti-slavery safeguarding leads', allowing direct referral to specialist support;
- establishing new multi-disciplinary panels to ensure that decision-making on cases was extended beyond UK Visas and Immigration and the Modern Slavery Human Trafficking Unit in the National Crime Agency; and
- creating a single case working unit within the Home Office to replace the current units in UK Visas and Immigration and the National Crime Agency.

The pilot was launched in August 2015 and was due to run until August 2016. [11] However, the pilot was later extended until March 2017. The pilot operates in 2 locations: the West Yorkshire police force area, and the South West (Avon and Somerset, Devon and Cornwall, Dorset, Wiltshire and Gloucestershire police force areas). Changes implemented in these areas include the reasonable grounds decision being undertaken by the slavery safeguarding lead and conclusive grounds decisions being made by the new multi-disciplinary panels. The Home Office recently

published guidance for the new slavery safeguarding leads and for the multi-disciplinary panels. [12]

The Home Office also piloted independent advocates to support child victims of trafficking in England and Wales. The trial ran for 12 months from September in 23 local authorities across England. [13] An independent evaluation of the trial assessed the impact of providing child trafficking victims with a single, consistent advocate with the capacity and expertise to promote their welfare and guide them through the various systems. A full evaluation report on the pilot was recently published. [14]

The Home Office has now re-piloted independent child trafficking advocates in Greater Manchester, Hampshire and Wales in what are called 'early adopter sites'. [15]

NOTES

- [1] Article 4, Council of Europe Convention on Action against Trafficking in Human Beings & Article 2, European Directive 2011/36/EU
https://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convtn/CETS197_en.asp#P866_102308
<http://eur-lex.europa.eu/legal-content/GA/TXT/?uri=celex:32011L0036>
- [2] Home Office, Review of the National Referral Mechanism for victims of human trafficking
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/467434/Review_of_the_National_Referral_Mechanism_for_victims_of_human_trafficking.pdf
- [3] Home Office, The United Kingdom's Modern Day Slavery Strategy, November 2014
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/383764/Modern_Slavery_Strategy_FINAL_DEC2015.pdf
- [4] Modern Slavery Act 2015
<http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>
- [5] National Crime Agency, Best Practice Guide
<http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/best-practice-guide>
- [6] Home Office, Duty to Notify Guidance
<https://www.gov.uk/government/publications/duty-to-notify-the-home-office-of-potential-victims-of-modern-slavery>
- [7] Government website – NRM Forms
<https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms>
- [8] Government website, Support for Victims of Trafficking Leaflet (various languages)

<https://www.gov.uk/government/publications/support-for-victims-of-human-trafficking>

[9] See National Crime Agency information on the NRM at <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism> and Home Office, Victims of Modern Slavery: Competent authority Guidance https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/450842/Competent_authority_guidance_v_2_0_ext.pdf

[10] Independent Anti-Slavery Commissioner, Strategic Plan 2015-2017

<https://www.gov.uk/government/publications/independent-anti-slavery-commissioner-strategic-plan-2015-to-2017>

[11] Home Office, Pilot evaluating the proposed reforms to the NRM

<https://www.gov.uk/government/publications/review-of-the-national-referral-mechanism-for-victims-of-human-trafficking/pilot-evaluating-the-proposed-reforms-to-the-national-referral-mechanism>

[12] Home Office, NRM pilots guidance

<https://www.gov.uk/government/publications/national-referral-mechanism-pilot-slavery-safeguarding-leads-ssl-and-multi-disciplinary-panel-member>

[13] Barnardo's, Child Trafficking Advisory Service
<http://www.barnardos.org.uk/cta.htm>

[14] University of Bedfordshire, Evaluation of Child Trafficking Advocates Trial: Final Report
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486138/icta-horr86.pdf

[15] Gov.uk website – Child trafficking advocates: early adopter sites

<https://www.gov.uk/government/publications/child-trafficking-advocates-early-adopter-sites>

This fact sheet should not be used to give legal advice and is for information and guidance only. For advice on individual cases, assistance should be sought from an independent regulated legal adviser.

For further assistance contact our advice line. Call 0207 636 8505 or email mcp@coramclc.org.uk.