

Joint civil society report on trafficking and modern slavery in the UK to the UN Human Rights Committee

UN Human Rights Committee

128th Session (02 Mar 2020 - 27 Mar 2020)

Examination of the eighth periodic report of the United Kingdom (List of Issues Prior to Reporting)

Anti-Slavery International
Anti-Trafficking Monitoring Group
Bawso
ECPAT UK (Every Child Protected Against Trafficking)
Focus on Labour Exploitation (FLEX)
Freedom United
JustRight Scotland
Kalayaan
The Voice of Domestic Workers
UNICEF UK

Contents

INTRODUCTION.....	3
EXECUTIVE SUMMARY.....	3
Slavery, forced labour and trafficking (arts 6, 7, 8, and 24).....	5
A. Trafficking and Modern Slavery	5
1. IMPROVEMENTS TO THE LEGAL AND POLICY FRAMEWORK	5
2. IDENTIFICATION.....	5
3. SUPPORT	8
4. ACCESS TO JUSTICE AND REMEDY.....	10
5. CRIMINALISATION OF TRAFFICKED PEOPLE.....	13
6. BREXIT	14
7. SUGGESTED QUESTIONS TO THE GOVERNMENT.....	14
B. Migrant Domestic Workers	15
1. SUMMARY.....	15
2. GAPS IN PROTECTION FOR MIGRANT DOMESTIC WORKERS	16
3. THE IMPACT OF DIFFERENTIAL RIGHTS TO WORK UNDER THE NRM.....	19
4. SUGGESTED QUESTIONS TO THE GOVERNMENT.....	19
Protection of children (art 24)	20
Trafficked Children	20
1. SUMMARY.....	20
2. CHILDREN AND THE NRM.....	20
3. GAPS IN SUPPORT FOR TRAFFICKED CHILDREN.....	21
4. DELAYS IN ROLLING OUT THE INDEPENDENT CHILD TRAFFICKING GUARDIAN SCHEME ..	22
5. ACCESS TO JUSTICE AND REMEDY.....	22
6. SUGGESTED QUESTIONS TO THE GOVERNMENT.....	23

INTRODUCTION

This joint submission to the Human Rights Committee (hereafter the Committee), coordinated by Anti-Slavery International, is by the following ten UK civil society organisations:

Anti-Slavery International, the Anti-Trafficking Monitoring Group (ATMG), Bawso, ECPAT UK (Every Child Protected Against Trafficking), Focus on Labour Exploitation (FLEX), Freedom United, JustRight Scotland, Kalayaan, The Voice of Domestic Workers, and UNICEF UK.

It provides information on:

1. Trafficking and modern slavery (Art 8)
2. Abuse and exploitation of migrant domestic workers, including trafficking and modern slavery (Art 8)
3. Trafficked children (Art 24)

EXECUTIVE SUMMARY

In recent years, there has been a number of significant and positive improvements to the legislative and policy framework addressing trafficking and modern slavery, and increased action and focus by the Government. However, we wish to highlight to the Committee the following gaps in the UK's response to trafficking and modern slavery:

- **Despite notable efforts, obstacles persist in ensuring the effective identification and protection of victims, and their access to justice and remedy.** The UK's official identification mechanism for victims of modern slavery, the National Referral Mechanism (NRM), remains flawed despite promised and recent reforms and pilots. Victim support is absent from the Modern Slavery Act with sections 49 and 50 still not completed. Aspects of victim support and identification have been found to not comply with the Council of Europe Convention in several recent legal challenges. Many victims are not identified. Of those who are, many fall through the gaps and struggle to access accommodation, safeguarding, medical services, counselling, and legal advice. Access to justice and remedy is particularly problematic. Many are unable to get legal advice when they need it. Levels of prosecutions and convictions for modern slavery offences are low in comparison to the increasing numbers identified. Mechanisms to provide remedy, including compensation to victims, are in place but in practice these remain largely inaccessible. Tensions with immigration and drugs legislation means that many victims are still criminalised. An increasingly hostile immigration environment, a weak stance on worker rights, and broad cuts to services as a consequence of austerity measures, threaten progress.

- **Migrant domestic workers continue to suffer from widespread abuse, exploitation, trafficking and modern slavery.** The Overseas Domestic Worker visa (ODW visa) increases vulnerability to these abuses by restricting migrant domestic workers to a non-renewable six-month visa, against the recommendations of an independent review commissioned by Government. This renders the right to change employer inaccessible. Changes announced by the Government in 2016 which had the potential to be positive have not been implemented in practice. Safeguards during the visa application process are rarely being

applied. It now seems unlikely that information sessions to inform all ODW visa holders of their entitlements will go ahead. No safeguards have been put in place for workers pending an update on the tendering process which closed in 2018. Migrant domestic workers referred into the NRM are experiencing differential rights to work depending on their visa status at the date a positive reasonable grounds decision is made.

- There is a long way to go towards fully understanding the scale and nature of the issue and protecting the children affected. There are significant gaps, particularly in the provision of care and support for child victims of trafficking. The NRM is currently not fit for purpose for child victims as it does not lead to any tangible or material support and is not based within the child protection system. Commitments made under the 2015 Modern Slavery Act to provide children with independent guardians have not been properly implemented. Barriers to securing immigration status, poor decision making and lengthy waits for immigration claims and other important decision leave non-UK national child victims particularly vulnerable as they transition to adulthood. The wider policy environment continues to impact on child victims of trafficking. In particular, cuts to services and the intention to create a 'hostile environment' on immigration undermine children's rights.

Slavery, forced labour and trafficking (arts 6, 7, 8, and 24)

A. Trafficking and Modern Slavery

1. IMPROVEMENTS TO THE LEGAL AND POLICY FRAMEWORK

In 2015, the Modern Slavery Act, Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland), and the Human Trafficking and Exploitation (Scotland) Act came into force. The three Acts introduced new criminal offences for human trafficking, slavery, servitude, and forced and compulsory labour, replacing earlier offences that were dispersed across a number of different laws. The Modern Slavery Act also established an Independent Anti-Slavery Commissioner. However, the Commissioner has struggled with independence and has no powers to affect substantial change.

In addition, new civil penalties were introduced designed to provide the courts with additional measures to prevent future offences. The Modern Slavery Act introduced the Slavery and Trafficking Prevention Order (STOP) and Slavery and Trafficking Risk Order (STRO), and the Scotland Act introduced the Trafficking and Exploitation Prevention Order (TEPO) and the Trafficking and Exploitation Risk Order (TERO). The Northern Ireland Act includes only a Slavery and Trafficking Prevention Order (STOP) and did not introduce a Risk Order.

Despite progress, problems persist in the Government's response to trafficking and modern slavery, particularly in the areas of victim identification, protection and support, and access to justice and remedy.

2. IDENTIFICATION

2.1 The National Referral Mechanism

The National Referral Mechanism (NRM), the UK's system of identification and support for victims of modern slavery, is a two-stage process decided by central Government (the Single Competent Authority, within the Home Office). Following the initial referral into the system by a First Responder, a preliminary finding of 'reasonable grounds' that a person is likely to be a victim of modern slavery, is supposed to be made within 5 days. This is followed by a final 'conclusive grounds decision, which triggers victim support measures and is supposed to take place within 45 days in England and Wales, and within 90 days in Scotland.

2.2 NRM referrals increase but positive decisions remain stagnant

The number of potential victims referred into the NRM in 2018 was 6,985; a 36% increase on the 2017 total of 5,142.¹ This represented 39% females and 61% men, with four recorded as transgender. It included 130 different nationalities, with UK, Albanian and Vietnamese nationals the most commonly reported potential victims.

However, despite an increase in referrals, positive conclusive grounds decisions still remain fairly stagnant. According to data published by the Government, the decision outcomes for those who were referred into the NRM in 2018 were that 24% received a positive reasonable grounds decision followed by a positive conclusive grounds decision, while another 44% were awaiting a conclusive grounds decision.² It is clear that many victims of trafficking and modern slavery remain unidentified. Only a minority of victims who receive a positive decision receive a residence permit.

2.3 The NRM remains flawed despite recent reforms and pilots

The NRM remains flawed despite recent reforms and pilots. The system is bureaucratic, lacks transparency and accountability, is often a matter of chance, and largely rests on decision making by people who lack the legal training to accurately identify trafficking and modern slavery. There is little information available as to what happens to victims who have been through the NRM, with fears that many are exploited again.³

Consent

Adults need to give informed consent into the NRM. Yet it is difficult in practice for First Responders to achieve informed consent as there is no government-funding available to support victims in the form of accommodation, food, nor access to legal aid for immigration advice⁴ before a positive Reasonable Grounds decision. In Scotland, there is provision for access to legal aid but relies on there being an immigration aspect to the case and the ability to access a specialist lawyer quickly, which can be difficult. The Government's proposal of three days 'safe spaces', so that adult victims leaving immediate situations of exploitation can be given assistance and advice before deciding on whether to enter the NRM, may help to remedy this challenge, particularly if the principles to underpin places of safety (2018) developed by specialist anti-trafficking

¹ 2019 UK Annual Report on Modern Slavery, para 1.11, p8. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840059/Modern_Slavery_Report_2019.pdf

² As of 12 July 2019, the decision outcomes for those referred into the NRM in 2018 were as follows: 21% received a negative reasonable grounds decision, 11% received a positive reasonable grounds decision and then a negative conclusive grounds, 24% received a positive reasonable grounds decision followed by a positive conclusive grounds decision, and 44% who received a positive reasonable grounds decision were still awaiting their conclusive grounds decision. See: 2019 UK Annual Report on Modern Slavery, *op.cit.*, para 1.12, pp8-9

³ For more information, please see Human Trafficking Foundation, Day 46. Is there life after the Safe House for Survivors of Modern Slavery, October 2016, which follows the lives of 30 women who were previously supported by the Poppy Project. Available at: <https://static1.squarespace.com/static/599abfb4e6f2e19ff048494f/t/599eec35a803bb09254f7d0d/1503587392258/Human+Trafficking+Foundation+Report+2016+Day+46.PDF>

⁴ In theory, if a potential victim of trafficking is also an asylum seeker, then they may be able to access legal advice. However, in practice, unless they already have an immigration advisor, it is unlikely that they will be able to get advice prior to referral due to the lack of provision available.

organisations are followed.⁵ However, there are concerns that access to the proposed ‘safe spaces’ might be limited to those referred by law enforcement.

According to the Anti-Trafficking Monitoring Group (ATMG)⁶, victims are still opting out of entering the NRM because they cannot see how to do so would be in their best interest. This is due to fears about the involvement of immigration services, being unable to work in the NRM, the delays, uncertainty around what support is available, relocation away from any existing support networks and the lack of outcomes from the NRM in terms of immigration status. This often means victims are choosing not to seek justice for the crimes committed against them and are often forced back into dangerous situations that increase the risks of exploitation.

Lack of specialist training

Most First Responders in statutory organisations are not specialists and have not been trained on how to identify and support potential victims or how to complete an NRM form (and a badly written form can result in the likely rejection of a positive decision) and are often unaware that they have this role.

Long delays in decision making

There are long delays in NRM decision making. The process to reach a Conclusive Grounds decision should take 45 days, and 90 days in Scotland, but in reality, takes significantly longer. A report by the National Audit Office found that in 2016 it took an average of 132 days for a Conclusive Grounds decision⁷. Kalayaan (a First Responder) reports that migrant domestic workers it referred into the NRM who received decisions in 2018 were waiting an average of 24 months (approx. 720 days) for a decision, with the longest wait 37 months (approx. 1110 days).⁸ The lack of statutory support prior to decision leaves victims facing homelessness, destitution, and vulnerability to further exploitation.

Transparency, scrutiny and accountability of decision making is poor

The level of transparency, scrutiny and accountability of NRM decision making remains low. The Multi-Agency Assurance Panels (MAAPs) can only review negative Conclusive Grounds decisions and cannot review negative Reasonable Grounds decisions. It remains unclear why this policy decision was made. If a MAAP disagrees with the original decision they can only refer it back to the Single Competent Authority (Home Office) which alone has the power to decide whether or not to change the decision.

There is no formal right of appeal against a preliminary or final NRM decision. An informal reconsideration request can be made, but this process is inaccessible in practice for many victims. Previously, an informal reconsideration request could only be made by a First Responder or care provider under the adult victim care contract. However, on 15 November, the High Court ruled that the restriction was unlawful, and the Home Office agreed it would direct its decision makers to no longer refuse a reconsideration request

⁵https://static1.squarespace.com/static/599abfb4e6f2e19ff048494f/t/5c08f8f54ae2375db96f6713/1544091902062/Places+of+Safety_BRC_ATLEU_HTF_ATMG.pdf

⁶ The Anti-Trafficking Monitoring Group was established in 2009 to monitor the UK’s implementation of European anti-trafficking legislation. It comprises thirteen leading UK-based anti-trafficking organisations.

⁷ National Audit Office, *Reducing Modern Slavery*, 15 December 2017, p6. Available at: <https://www.nao.org.uk/wp-content/uploads/2017/12/Reducing-Modern-Slavery.pdf>

⁸ Kalayaan, *Dignity not Destitution*, October 2019, p7

which has come from someone other than First Responder or care contract provider.⁹ Nevertheless, the process remains dependent on victims having access to significant support and advice, which many do not, especially if they have exited the NRM. If a reconsideration request is rejected, the decision can be Judicially Reviewed if a lawyer can be found. However, even if successful, a Judicial Review can only revert the decision back to a positive Reasonable Grounds decision and by this point the victim may have been exited from support and become uncontactable.

2.4 The right to work within the NRM

The majority of survivors in the NRM are banned from working, meaning that some are extremely vulnerable to being further exploited as they are forced to look for alternative ways to make enough money to survive. The current system, which provides for limited financial assistance for victims in the form of weekly subsistence payments, is reported to be a disincentive to entering the NRM. Poverty or debt has often been a significant factor in initial exploitation and many victims have increased their debts to migrate with the promise of lucrative employment and may not have been paid for years. These factors, combined with pressure to support family members, who may be threatened by debt collectors, leave people extremely vulnerable to further exploitation. In some cases, victims prefer working in insecure and even exploitative jobs that ensure them a higher income than the NRM provides them in subsistence, in order to continue supporting themselves and their families.

3. SUPPORT

More than four years after the Modern Slavery Act came into force, there are significant gaps in the provision of support to victims. A ‘lottery’ operates, where the quality of support a survivor receives may be dependent on the location in which they live, or the expertise of their support provider, for whom there are no professional standards, and whereby immigration decisions can increase their vulnerability to being exploited again.

3.1 Victim care absent from the Modern Slavery Act and the ongoing failure to issue Statutory Guidance in a timely and consultative manner

The Modern Slavery Act, unlike its counterpart legislation in Scotland and Northern Ireland, does not contain provisions regarding victim support for adults. Rather, under Section 49 of the Act, the arrangements for identifying and supporting victims are to be set out in guidance to be issued by the Secretary of State, which may be revised from ‘time to time’.

The process of drafting and consulting on the Section 49 guidance over the past four years has been highly problematic and adhoc in nature, characterised by delays and a lack of transparency. In January 2019, three UN Special Rapporteurs wrote to the Government “concerning what appears to be an inadequate implementation of the Modern Slavery Act; in particular the ineffective and insufficient consultation with civil society organisations on a statutory guidance on trafficking in persons.”¹⁰

⁹ <https://dpglaw.co.uk/high-court-declares-trafficking-policy-unlawful/>

¹⁰ Available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24281>

At the time of writing, the Section 49 Guidance on victim care has not been published. This is despite a High Court judgement over a year ago in November 2018 which stated, ‘It is the Home Secretary’s absolute duty immediately to issue the guidance that Parliament has required of him’.¹¹

The most recent draft version of the guidance (July 2019) is more complete than the previous version, and civil society organisations welcomed the commitment to adopt the Slavery and Trafficking Survivor Care Standards (‘the Standards’) as a minimum standard of care within the guidance¹², alongside the introduction of a Modern Slavery Act Statutory Guidance Board. However, there remains significant gaps in the content of the Guidance with regard to victim care and support that must be addressed.

3.2 Limited victim support measures

At current, following a positive Reasonable Grounds decision, in England and Wales care is provided by the Government for a limited, non-statutory period while the Conclusive Grounds decision takes place which triggers victim protection measures. As highlighted, NRM decision making is extremely slow and the lack of statutory support in this usually lengthy period leaves survivors facing homelessness, destitution, and vulnerability to further exploitation.

Even once an individual has been conclusively identified as a victim of modern slavery, there are significant gaps in protection and support. Those conclusively identified would receive 45 days of statutory support (increased from 14 days), after which most found they had to move out of a safe house without any further support as they attempted to rebuild their lives away from slavery. However, in June 2019 the Government settled a case brought by two people who had been trafficked which challenged the 45 day cut off of their support as arbitrary, conceding that it is incompatible with the Council of Europe Convention on Trafficking, which requires support to be provided on the basis of an individual’s needs rather than by time alone. In response, the Recovery Needs Assessment Guidance was issued in September 2019. Civil society organisations have multiple concerns about the Guidance. The whole process is based on a support worker making a request for further support, but not all victims have a support worker. The guidance has significant gaps with respect to access to secure housing, counselling, and there are insufficient reconsideration options.

The NRM structure for adults presumes that local authorities will provide housing and support prior to, and following, the NRM. Yet no additional funding has been provided to councils outside of new Home Office pilots, and so most local authorities’ teams simply

¹¹ *K & Anor, R v Secretary of State for the Home Department*, [at Paragraph 8], in reference to Modern Slavery Act Section 49 ‘Guidance about identifying and assisting victims’

¹²In October 2017, the government announced that it will adopt the Human Trafficking Foundation’s Trafficking Survivor Care Standards and include them in future NRM victim care contracts. The then Minister responsible, Sarah Newton MP [explained during a backbench debate on the Modern Slavery Act](#): “If a potential victim opts to enter the NRM, we must ensure that the care they receive is consistent and meets minimum standards, regardless of where in the country they are being cared for. That is why the Government will adopt the Human Trafficking Foundation’s trafficking survivor care standards as a minimum standard for victim support”.

<https://www.humantraffickingfoundation.org/news/2018/10/12/launch-of-updated-slavery-and-trafficking-survivor-care-standards>

refuse to support victims.¹³ There is currently no presumption that a positively identified victim of trafficking is in ‘priority need’ for housing¹⁴.

There are no statutory pathways or ongoing care plans in place for survivors of trafficking and modern slavery to be referred and supported as a vulnerable adult. This leaves people vulnerable to further exploitation due to a lack of options. Police told the Human Trafficking Foundation that they have re-referred the same individual into the NRM three times, as each time they exited NRM support they became destitute and fell into exploitation again.

Although there is provision for the Single Competent Authority to grant a residence permit with a positive Conclusive Grounds decision, this is not automatic, with permits only granted to a minority of conclusively identified victims of trafficking and modern slavery (12% in 2015).¹⁵ This means that they are often without further or additional support. Many victims apply for asylum and end up spending years in the asylum process and in accommodation which is often not suitable for victims of trafficking. Many EEA nationals who have been trafficked are not considered eligible for public funds due to being unable to prove that they have been working in the UK.

In 2019, the Committee on the Elimination of Discrimination against Women (CEDAW) stated it “...remains concerned that many victims of trafficking and modern forms of slavery remain unidentified and that the support provided to victims is inadequate, putting victims at risk of homelessness, destitution and further exploitation.”¹⁶

3.4 The impact of austerity

Austerity and the on-going cuts to public services continue to undermine the UK’s ability to deter the crime of trafficking through an effective criminal justice system or prevention work, The limited financial support provided while in the NRM is not enough for survivors to cover their expenses, travel to medical appointments and pay for leisure activities. This poverty makes them again vulnerable to re-trafficking and accepting exploitative employment.

4. ACCESS TO JUSTICE AND REMEDY

4.1 Access to specialist Legal Advice

Legal advice is a critical part of the support that victims of trafficking and modern slavery need and is crucial to their recovery. Regrettably, many are currently unable to get legal advice when they need it. The UK’s legal aid sector has been decimated by cuts to legal aid with resulting legal aid ‘deserts’ in some areas of the UK together with a loss of expertise in general. In addition, legislation too narrowly defines what is in scope for legal

¹³ In *R (AK) v Bristol City Council* (CO/1574/2015), it was accepted by the local authority in a consent judgement that they were not prevented from providing assistance to victims of Modern Slavery under the Localism Act. These principles are also reflected in a contested case of *R (GS) v Camden* [2016] EWHC 1762

¹⁴ Section 189 of the Housing Act 1996

¹⁵ <https://www.parliament.uk/documents/commons-committees/work-and-pensions/Letter-from-Sarah-Newton-MP-to-Chair-re-modern-slavery-session-17-2-2017.pdf>

¹⁶ Concluding Observations of the Committee on the Elimination of Discrimination against Women, CEDAW/C/GBR/CO/8, 14 March 2019, para 33

aid and there are procedural issues around how and when cases are funded, alongside poor decision making by the Legal Aid Agency on modern slavery cases. This is compounded by a lack of guidance, training and monitoring of modern slavery and trafficking cases. Immigration cases with a trafficking element are considered financially unviable by many legal aid providers due to their length and the lack of clarity around whether the work will be funded by the Legal Aid Agency.¹⁷ As a result, many providers are deterred from undertaking this work, which leaves survivors and support workers struggling to secure lawyers, with some waiting up to a year to see an immigration lawyer. The lack of legal advice provision is an issue across all of England and Wales, with the north of England being especially poorly served. In Scotland, although access to legal aid is better, there are also problems with an insufficient number of specialist lawyers available, with some geographical areas particularly badly affected. Providers in Scotland can be deterred from undertaking the work because it is not financially viable, or they lack the specialist expertise. As it stands, the system is not fit for the purpose.

In 2019, CEDAW recommended that the Government ensure vulnerable women including victims of trafficking “...**have effective access to justice and remedies with adequate legal support and representation, including by ensuring that legal aid and representation is accessible and available and the provision of procedural and age-appropriate accommodations.**”¹⁸

4.2 Low level of prosecutions compared to the numbers identified

While the numbers of prosecutions for trafficking and modern slavery offences are steadily rising, conviction numbers remain low compared to the number of victims identified year on year. An inspection by Her Majesty’s Crown Prosecution Inspectorate (HMCPPI) reported a “significant disparity between the numbers of potential victims, the numbers that go through the National Referral Mechanism, and the number of actual prosecutions. The volume of human trafficking referrals from the police rose in 2016-2017 to their highest ever levels, but a smaller proportion resulted in a criminal prosecution and the volume of human trafficking convictions fell”¹⁹. The HMCPPI identified “a confused picture” in terms of the consistency of training of casework lawyers tasked with prosecuting trafficking and modern slavery in England and Wales.²⁰ The ATMG found that prosecutors in Northern Ireland and Scotland lacked up to date and comprehensive training. An inspection by Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services into the response of police in England and Wales to human trafficking and modern slavery concluded that “victims are being let down at every stage. Identification, information flows, victim focus, and investigative practice all need to be improved considerable so that victims receive the

¹⁷ However, in April 2018 the Government conceded a Judicial Review brought by ATLEU and there is now greater clarity for all victims about their access to free legal advice. The Legal Aid Agency has confirmed it will extend this interpretation to victims of slavery, servitude and forced or compulsory labour as well (under para 32A of LASPO). This means victims of all types of modern slavery have a confirmed right to free immigration advice. Please see for more information: <https://atleu.org.uk/news/legalaidimmigrationadvice>

¹⁸ Concluding Observations of the Committee on the Elimination of Discrimination against Women, CEDAW/C/GBR/CO/8, 14 March 2019, para 23 and 24

¹⁹ Her Majesty’s Crown Prosecution Service Inspectorate, *The CPS response to the Modern Slavery Act 2015*, 2017, para 1.6, p2

²⁰ *Ibid.*, para 1.9

full range of protections and safeguards to which they are entitled, and more offenders are brought to justice.”²¹

There are a number of factors which can impact on the authority’s ability to mount a prosecution, including inadequate victim support and a lack of resources. Support is inconsistent where cases took months or years to build, with survivors often left in limbo. Cuts to the criminal justice system over the past decade have been substantial and lack of resources contributes to low prosecution and conviction rates of traffickers. Trafficking cases are complex crimes, often involving multiple victims and perpetrators, often international and may include many other offences such as fraud, assault or extortion.²² The introduction of new legislation has not always simplified prosecutions as intended.

4.3 Access to compensation

Compensation plays an important role in assisting survivors to hold those responsible to account, provide for their families, and rebuild their lives. Yet, numerous barriers are encountered by those attempting to access their right to compensation.

The number of survivors accessing legal aid for advice on obtaining compensation is minimal and a fraction of what is needed. Data given in response to a Parliamentary question shows that between 2014 and 2017, less than 1% of those referred into the NRM were able to access legal aid in respect of a potential compensation claim against their trafficker.²³ Where survivors do recover compensation, the Government recovers the cost of running their case on legal aid from the total award, in some cases almost entirely extinguishing their compensation.

There is still no civil remedy for trafficking and modern slavery. Without a civil remedy, survivors rely on civil lawyers to shoehorn their case into existing causes of action and remain unable to recover damages for the specific act of being trafficked or held in slavery.

The current employment tribunal and High Court and County Court claims for people who have been trafficked or in modern slavery are remarkably lengthy and complex. It is frequently in excess of 18 months to reach a full trial and requires very considerable tenacity and courage on behalf of the survivor, many of whom receive threats to themselves and their families back home. Due to the complexity, it is effective only for those who are able to access specialist representation, which is rare.

For many survivors, an application to the Criminal Injuries Compensation Authority (CICA) is their only route to obtain compensation. Yet, those who seek to make claims under the CICA experience multiple obstacles. An application must be made within two years of the criminal injury suffered. Many make an application outside of the two-year time limit, due to trauma, lack of knowledge and assistance, and most do not realise that they need to

²¹ Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services, *Stolen freedom: the policing response to modern slavery and human trafficking*, October 2017, p13. Available at : <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/stolen-freedom-the-policing-response-to-modern-slavery-and-human-trafficking.pdf>

²² Anti-Trafficking Monitoring Group, *Before the harm is done: examining the UK’s response to the prevention of trafficking*. September 2018.

²³ Answered by Dominic Raab on 1 September 2017 <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-11-21/114965/>

do this on top of being referred into the NRM. There is normally no legal aid available for victims of trafficking to apply to CICA or to challenge their decisions. In Scotland, while there is legal aid available in theory, lawyers are not taking these cases because it is not financially viable therefore in practice it is not a realistic option for the vast majority. The scheme requires a victim to have suffered a “crime of violence”. Trafficking or modern slavery is not of itself considered a crime of violence and many victims are denied compensation. CICA is able to withhold awards of compensation to an applicant “*unless you co-operate fully with the investigation into the crime and any prosecution that follows*”²⁴, and routinely does so without any consideration of the Applicant’s reasons or circumstances. When compensation is paid this is usually after years of waiting and is considered insultingly low, not taking into account the psychological injuries from trafficking and modern slavery.

The Modern Slavery Act introduced a bespoke Reparation Order, purportedly to enable the courts to ensure that more money from those convicted of slavery goes directly to their victims. However, at the time of writing it appears that no reparation orders have yet been made. Reparation orders require the conviction of the defendant, and convictions for modern slavery offences remain low.

The Deduction from Wages (Limitation) Regulations 2014, introduced as secondary legislation during the passage of the Modern Slavery Act with no parliamentary oversight, significantly limits the ability of victims of trafficking to recover the National Minimum Wage (NMW). It prevents victims from obtaining more than two years owed in NMW, despite the fact that they may have been paid little or nothing for several years. Prior to the introduction of this legislation, a victim of trafficking or servitude could recover wages for the entire period that they were held in servitude.

The ‘Family Worker Exemption’, contained in the NMW Regulations 2015²⁵, provides that live-in domestic workers are not entitled to receive the national minimum wage or any payment at all, if the worker is “treated as a member of the family”. This Exemption is frequently used as a litigation tool by traffickers to defend court or tribunal claims.

5. CRIMINALISATION OF TRAFFICKED PEOPLE

The Government continues to bring in legislation that is likely to contradict or undermine the Modern Slavery Act. For example, provisions in the Immigration Act 2016 are likely to directly undermine it by creating the offence of illegal working, despite ample evidence presented that many victims become undocumented or have their insecure status used by their traffickers to make it easier for them to be controlled and to detract the attention of law enforcement from the perpetrators. The UK’s hostile immigration environment remains in conflict with its stated determination to tackle slavery.²⁶

²⁴ <https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide#withholding-or-reducing-an-award>

²⁵ Regulation 57 of the National Minimum Wage Regulations 2015

²⁶ For example, please see the Modern Slavery Strategy Implementation Group: Task & Finish Group on Prevention: Statement on Overseas Domestic Workers, which raises concerns about the contradiction between vulnerability to exploitation created by the terms of the Overseas Domestic Work visa and the government’s stated aims regarding the eradication of modern slavery.

<https://www.labourexploitation.org/publications/modern-slavery-strategy-implementation-group-task-finish-group-prevention-statement>

Despite existing guidance from the Crown Prosecution Service, people who have been trafficked and in modern slavery continue to be wrongly criminalised for drug, benefits or immigration offences that were the result of their exploitation. Although section 45 of the Modern Slavery Act introduces a defence for victims, including children, who are compelled to commit criminal offences, it can only be relied upon once the prosecution process has commenced. Therefore, it does not protect victims from being prosecuted in the first instance. In Scotland, although there are guidelines on non-prosecution, there is not a defence for victims. There is also low awareness of these guidelines and how to use them.

A 2019 report by the Labour Exploitation Advisory Group²⁷ identified 143 victims of trafficking who have experienced immigration detention before or after being referred to the NRM. In some cases, they are being kept in detention despite having a Positive Reasonable Grounds decision that they are likely to be a victim of trafficking. In others, they are being kept in detention after being referred into the NRM – they are referred whilst in the community and then are still detained under immigration powers. The Home Office is acting in direct conflict with its own rules and guidance regarding the use of immigration detention and treatment of victims of trafficking; it is only meant to detain people for removal, and potential victims of modern slavery cannot be removed while consideration is being given as to whether there are reasonable grounds to believe they are a victim. The detention of potential trafficking victims under immigration powers shows systemic failures by the Government, largely due to the conflict of interest by which the Home Office is in charge of tackling modern slavery at the same time as overseeing immigration.

6. BREXIT

With many of the UK's anti-slavery efforts stemming from EU legislation, cutting ties with the EU presents risks and challenges. The first of these is a lack of access to EU wide mechanisms such as Europol or Eurojust, preventing relevant authorities working effectively with other countries to investigate international trafficking cases. The second is that many people will also be made more vulnerable by potential changes in their immigration status, potentially leading to an increase in exploitation. Proposed tied or time limited visas carry a particular risk of exploitation. The third challenge is in the safeguarding of victims – with many protections currently stemming from the EU law, Brexit greatly risks diluting them.

7. SUGGESTED QUESTIONS TO THE GOVERNMENT

Identification

- What measures will the Government take to address obstacles in the effective identification of victims of trafficking and modern slavery, and to ensure a system that is non-discriminatory and has the best interests of survivors at its heart? Will it introduce statutory training for all First Responders; ensure that all potential victims have access to free legal advice prior to consenting to enter the NRM; and formalise the NRM

²⁷ Detaining Victims: Human Trafficking and the UK Immigration Detention System
<https://www.biduk.org/posts/493-detaining-victims-human-trafficking-and-the-uk-immigration-system>

reconsideration process with clear guidance, set time scales, and support and representation guaranteed for victims throughout?

Support and care for survivors

- In light of evidence that many survivors of trafficking and modern slavery struggle to access accommodation, safeguarding, medical services, counselling, specialist support and legal advice, does the Government intend to address gaps in victim support and care by increasing funding for specialised services and developing a new individual needs-based system with independently inspected minimum standards of support which prioritises the survivor?
- Will the Government extend the right to work to all people who enter into the NRM, to allow them to support themselves and prevent destitution and the risk of further exploitation; and grant a three year residence permit together with specialist case worker support for those who receive a positive Conclusive Grounds NRM decision to allow for recovery and access to their entitlements under article 12 of the European Convention on Trafficking?
- What is the timetable for the drafting of the Section 49 Statutory Guidance, and what consultation with the public, relevant statutory sector professionals and civil society organisations is envisaged?

Criminalisation and detention of trafficked people

- As evidence shows that, despite existing guidance in place, people who have been trafficked or in modern slavery continue to be criminalised for offences committed while coerced, including trafficked children, and have been subjected to detention under immigration powers, how does the Government intend to ensure the full implementation of its guidance?

Barriers in access to justice and remedy

- Given barriers in access to justice and compensation for victims of trafficking and modern slavery, will the Government consider a) bringing advice about entering the NRM into the scope of legal aid, b) introducing a legal aid contract for compensation claims relating to trafficking and modern slavery, c) reform CICA to make it relevant to the crime and forms of trauma suffered, d) bring CICA applications within the scope of Legal Aid, and e) addressing the lack of application of Reparations Orders introduced by the Modern Slavery Act

Challenges posed by Brexit to progress on trafficking and modern slavery

- Will the Government introduce primary legislation which transposes the rights of victims to support and assistance, as detailed in the EU Trafficking Directive, into domestic law in England and Wales prior to the UK exiting the EU?

B. Migrant Domestic Workers

1. SUMMARY

Migrant domestic workers, the vast majority of whom are women and predominantly live in their employer's household, continue to suffer from widespread abuse, exploitation, trafficking and forced labour. The Overseas Domestic Worker visa (ODW visa) increases

vulnerability to these abuses by restricting migrant domestic workers to a non-renewable six-month visa, against the recommendations of an independent review commissioned by the Government. This renders the right to change employer inaccessible in practice. Further protections announced by the Government, such as information sessions to inform all ODW visa holders of their entitlements, have not been implemented in practice and are now reportedly unlikely to go ahead. Given the Government acknowledged the vulnerabilities of domestic workers to trafficking and domestic servitude at the time of the Modern Slavery Act, yet has failed to put these so called protection measures in place, it seems clear that there needs to be a fresh assessment of preventing exploitation of ODW visa holders and a return to, at minimum, the rights within the pre 2012 ODW visa.

2. GAPS IN PROTECTION FOR MIGRANT DOMESTIC WORKERS

2.1 2012-2016: The tied visa

In 2012, the government removed the right of migrant domestic workers to change employer and limited the duration of the visa to six months, thus making the ODW visa a ‘tied’ visa. This decision was deeply damaging for the protection of ODWs, leaving them to face abuse, exploitation and forced labour with no escape route. Levels of abuse increased profoundly due to the increased power difference between employer and worker as workers were unable to leave and find alternative employment.²⁸

2.2 2016 changes to the ODW visa - Protection gaps continue

The Government-commissioned independent review of the ODW visa (2015) recommended that all migrant domestic workers be granted the right to change employer, and to be allowed to renew their visa for a period totalling two and a half years. It concluded that visa extensions allowing a period of stay in the UK totalling two and half years equalled “the minimum required to give effective protection to those overseas domestic workers who are being abused while in the UK”.²⁹

Regrettably, the Government decided not to implement the review’s recommendations in full.

Changes to Immigration Rules in 2016 allowed people on the ODW visa to change employer during the six-month period for which they are admitted only. As a consequence of this policy framework in place, migrant domestic workers are forced to remain with abusive employers rather than lose their livelihood, accommodation and permission to stay in the UK. This is because they are restricted to full time domestic work in a private household and their visa is not renewable beyond 6 months. It is unrealistic in practice to find decent work in a domestic setting- work which inevitably involves personal relationships and intimacy, with only a few months left on a non-renewable visa.

2.3 Abuse levels continue unabated under the amended ODW visa

Under the amended visa regime in place since 6 April 2016, rates of abuse have been consistent with and in some cases higher than those who arrived in the UK on the ‘tied visa’.

²⁸ See Kalayaan, *Still enslaved: The migrant domestic workers who are trapped by the immigration rules*, April 2014 <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/tied-visa-20141.pdf>

²⁹ Independent Review of the Overseas Domestic Workers Visa, by James Ewins, 16 December 2015. Para 11

From 1 April 2017 to 31 March 2018 Kalayaan assisted a total of 280 migrant domestic workers through their advice services, including 105 new service users. Kalayaan identified that 72% of these workers presented with indicators of trafficking and modern slavery. Of the new service users registered at Kalayaan during this period who arrived on the amended visa (after 6 April 2016), 25% reported physical abuse and 69% reported psychological abuse. Seventy five percent worked over 15 hours a day, 88% were not allowed a day off each week, 87% were constantly ‘on call’, and 93% were not allowed out of the house by themselves. Some 53% reported that they did not receive regular food, and 68% did not have a bedroom or private sleeping space.³⁰ Only seven per cent had possession of their passport. Without proof of their leave to remain and permission to work, workers are left in a very precarious position. Without recourse to public funds and without knowing whether or not they have valid leave to remain, they are resigned to having to accept any work offered to them or face becoming destitute. Some unscrupulous employers exploit this vulnerability and offer exploitative work by telling workers they are taking a risk in hiring them without their documents and others refuse to hire with the introduction of the offence of illegal working in the Immigration Act 2016. Only 30% were aware that they had the right to change employer, a right that is not accessible in practice.³¹

2.4 Other safeguards are deficient or not operating in practice

In response to concerns raised internationally about the vulnerabilities caused by the policy framework in place for migrant domestic workers, the Government frequently refers to additional protections. Including: safeguards put in place as part of the visa application process, including the requirement to be seen alone; an information leaflet setting out their rights; and a plan to introduce compulsory information meetings. In addition, a domestic worker who has received a positive conclusive grounds decision as a victim of modern slavery can apply for an additional two-year ODW visa. However, these safeguards are either not operating in practice or have not been introduced some three years later. In the case of the visa for ODWs found to have been trafficked, it does nothing to prevent trafficking, forces workers to leave abusive employment without knowing that they will be believed, and offers nothing to workers whose rights were abused but who were not trafficked or victims of modern slavery.

Kalayaan’s evidence disputes that safeguards put in place for workers as part of the visa application process are operating effectively, including the requirement to be seen alone and that they receive an information leaflet setting out their rights. Less than half of those workers who registered with Kalayaan between 1 April 2017 to 31 March 2018 were interviewed as part of the visa application process, and 73% of those interviewed were accompanied to this interview by their employer or their employer’s representative, so were not free to disclose abuse. Only 9% were given an information leaflet regarding their rights in the UK.³²

³⁰ Data collected by Kalayaan of migrant domestic workers registering between 1 April 2017 and 31 March 2018. Full data available in Kalayaan’s annual report pp4-5 at <http://www.kalayaan.org.uk/wp-content/uploads/2019/07/Annual-report-17-18.pdf>

³¹ *Ibid*

³² Full data available in Kalayaan’s annual report at <http://www.kalayaan.org.uk/wp-content/uploads/2019/07/Annual-report-17-18.pdf>

It is disputed that information sessions are a suitable protection measure while domestic workers remain on a visa limiting them to 6 months in the UK, so in practice preventing them finding alternative decent work and limiting access to any rights they can be informed about. Yet, the government has delayed and backtracked even on the provision of information sessions; commencing a tendering process for a provider based upon flawed terms, and watering down commitments such as deciding that attendance at the meetings would no longer be compulsory and that no welfare checks would be carried out on workers who fail to attend, making it likely that only those working for decent employers would be allowed to attend anyway.³³ The Government has now recently stated in policy meetings that it no longer plans to establish compulsory information meetings at all, with only a vague explanation of ‘commercially sensitive issues with the tender process’ provided.

As previously outlined, conclusively identified victims of trafficking are not automatically entitled to grants of leave to remain in the UK. Instead, they must apply for discretionary leave to remain and this is frequently denied. Migrant domestic workers with a positive conclusive grounds decision, who are not granted discretionary leave to remain, can now apply for further leave as a domestic worker up to a maximum of two years under s53 of the Modern Slavery Act. No information regarding this right for workers is mentioned in any of the correspondence that victims receive, in breach of Competent Authority Guidance. Instead, Kalayaan has seen numerous decision letters with information and contact details for returning to their home country. This further leave is issued with no recourse to public funds. Workers must provide evidence of their finances and demonstrate how they will be self-sufficient without recourse to public funds which is nigh impossible for those who have been denied permission to work and made reliant on support whilst they have been in the NRM. Unless they have pre-existing leave, they cannot work until their visa is issued but have no access or entitlement to any support whilst they wait, leaving them vulnerable to further exploitation as means to survive. The no recourse to public funds condition of the visa forces workers to take work which may be exploitative or before they may be ready, having only recently been trafficked within the same work sector.

In 2019, the UN Committee against Torture stated that “While noting the explanation provided by the delegation on the changes made in 2016 to the terms of the so-called “tied” visa for foreign domestic workers, the Committee expresses concern that these changes do not provide a meaningful escape route for many migrant workers who have experienced abuse in the UK, especially those who become trapped in abusive employment relationship (art. 16).” Further, that **“The State party should consider adopting further measures to encourage migrant domestic workers who are subjected to ill-treatment to report their abuse to authorities, including providing information to migrant domestic workers on their rights and taking measures to enhance the ability of migrant domestic workers to obtain alternative employment.”**³⁴

³³ See <http://www.kalayaan.org.uk/news/tendering-process-for-odw-information-meetings-undermines-governments-stated-aim-to-empower-workers-and-penalize-exploitative-employers/>

³⁴ Committee against Torture, Concluding Observations on the sixth periodic report of the United Kingdom, CAT/C/GBR/CO/6, 7 June 2019, para 60 and 61

3. THE IMPACT OF DIFFERENTIAL RIGHTS TO WORK UNDER THE NRM

For overseas domestic worker visa holders identified as potential victims of trafficking and modern slavery by a positive reasonable grounds decision (the first stage in the NRM process), there is a crucial distinction depending on their visa status at the date this decision was made:

- If the worker's initial six-month visa is still valid at the date of the reasonable grounds decision, they will have the right to work until 28 days after a conclusive grounds decision is made.
- If a worker's initial six-month visa has expired by the date of the reasonable grounds decision, they do not have the right to work whilst they wait for a conclusive grounds decision.

Migrant domestic workers on the ODW visa face a number of barriers in being able to seek advice on a referral to the NRM whilst they still have valid leave. They often have no or limited control over when they were able to flee their abusive employer and escaped with only a few months or weeks remaining on their visa. This issue is compounded as workers are still not routinely being issued with information on their rights as part of the visa application process or after they arrive in the UK so do not know where or who to get help from after they escape. Many report that they are too fearful to approach the authorities. Many also escape without possession of their passport and do not know when their visa expires. A combination of factors, including the time spent in exploitation in the UK, the need to find safe accommodation and re-employment and not knowing who to contact for advice and support, mean that their visa may have already expired by the time they are able to seek an NRM referral.

Without permission to work, workers in the NRM are drawn into destitution and left vulnerable to further harm and exploitation. Limited financial assistance is provided under the Government care contract whilst their claim is being considered. Those in receipt of outreach services, where victims are supported in their local communities, receive £35 a week. Given the low amount, workers are made reliant on their community to survive. Relatives back home also suffer, exacerbating the vulnerabilities workers have and which led them to look for work abroad to begin with.

The restriction on working also affected the mental health of workers, with those without permission reporting to Kalayaan that they felt worthless, subservient and punished by a system meant to protect them. In contrast, workers with permission to work were financially independent and able to provide for their families. Issues they experienced resulted from a lack of clarity about their right to work.³⁵

4. SUGGESTED QUESTIONS TO THE GOVERNMENT

³⁵ Kalayaan, *Dignity not Destitution. The impact of differential rights of work for migrant domestic workers referred to the National Referral Mechanism*, October 2019.
<http://www.kalayaan.org.uk/campaign-posts/dignity-not-destitution-the-impact-of-differential-rights-of-work-for-migrant-domestic-workers-in-the-national-referral-mechanism/>

- In light of the continued and worsening exploitation of migrant domestic workers, and that the Government acknowledged the vulnerabilities of migrant domestic workers at the time of the Modern Slavery Act but has not put in place new protection measures previously announced, will the Government reinstate the original Overseas Domestic Work visa with the right to change employer and to apply to renew the visa based on that employment?
- Does the Government intend to fully implement the minimum standards developed by Kalayaan and advisory group of experts with regards to the visa application process and scope and delivery of information meetings for migrant domestic workers, including making them compulsory for all workers?³⁶
- Given the particular vulnerabilities of migrant domestic workers in diplomatic households, will the Government require Tier 5 visa holders who work for diplomats to be employed by Embassies and not diplomats?
- Will the Government extend the right to work to all migrant domestic workers in the NRM, regardless of their visa status, as a measure to allow them to support themselves and live in dignity, and prevent them falling into destitution or risk further exploitation?

Protection of children (art 24)

Trafficked Children

1. SUMMARY

There is a long way to go towards fully understanding the scale and nature of the issue and protecting the children affected. There are significant gaps, particularly in the provision of care and support for child victims of trafficking. The NRM is currently not fit for purpose for child victims as it does not lead to any tangible or material support and is not based within the child protection system. Commitments made under the 2015 Modern Slavery Act to provide children with independent guardians have not been properly implemented. Barriers to securing immigration status, poor decision making and lengthy waits for immigration claims and other important decision leave non-UK national child victims particularly vulnerable as they transition to adulthood. The wider policy environment continues to impact on child victims of trafficking. In particular, cuts to services and the intention to create a ‘hostile environment’ on immigration undermine children’s rights.

2. CHILDREN AND THE NRM

The number of children referred into the NRM increased 48% to 3,137 in 2018, compared to 2,118 in 2017, in large part due to the rise in cases of child criminal exploitation in the

³⁶ <http://www.kalayaan.org.uk/news/kalayaan-and-experts-publish-minimum-standards-for-odw-information-meetings/>

form of ‘county lines’ exploitation (when gangs and organised crime networks exploit children to sell drugs, often these children are made to travel across counties.)³⁷

ECPAT UK (Every Child Protected Against Trafficking) remains very concerned that the NRM is not fit for purpose for children and requires a new approach in order to ensure children are identified quickly and accurately, safeguarded properly and given specialist support, with durable solutions found for each individual case.

In common with adult victims, timeframes for NRM decisions are not met, with long delays particularly experienced by children who are also claiming asylum, and poor decision-making, particularly at the first stage. The Government announced that it will look into making the NRM more ‘child friendly’, but this has not led to any meaningful changes for children.

3. GAPS IN SUPPORT FOR TRAFFICKED CHILDREN

There continues to be major concerns that the NRM does not provide clear, additional benefits to the children it identifies as victims of trafficking. Without full rollout of the Independent Child Trafficking Guardian scheme, a positive NRM decision does not lead to any material benefit for the child in regard to care, immigration status or criminal justice experience.

Central Government funds an annual £9m contract for the delivery of specialist support in England and Wales for adult victims. Yet there is currently no central funding available nationally for the specialist care of trafficked children who are instead supported by local authority children’s services.

Under the austerity agenda, funding to children’s services has been drastically cut, which has serious implications for child victims of trafficking. In particular, cuts are falling on prevention, training and early intervention services for children; the services that can help prevent children from becoming vulnerable to exploitation and trafficking.

A continuing strategy by the Government to create a so-called ‘hostile environment’ aimed at deterring irregular migration to the UK has had a detrimental impact on trafficked children who are non-UK nationals.

There are well established failings by local authorities in protecting and safeguarding children. Trafficked children in the UK have a very high risk of going missing from the care system, and being re-trafficked.³⁸ Obtaining accurate data on child trafficking (and those children who go missing) continues to be a challenge due to the way in which child protection is devolved and thus overseen at a local level by local authorities.

³⁷ National Crime Agency, National Referral Mechanism Statistics End of Year Summary 2018, published 20 March 2019, available at <https://nationalcrimeagency.gov.uk/who-we-are/publications/282-national-referral-mechanism-statistics-end-of-year-summary-2018/file>

³⁸ ECPAT UK and Missing People, *Still in Harm’s Way. An update report on trafficked and unaccompanied children going missing from care in the UK*, December 2018. Available at: <https://www.ecpat.org.uk/still-in-harms-way>

There is still a long way to go to ensure that the response to child trafficking is centred around children's rights and needs. Long term, the UK must implement a system similar to that outlined in the EU Anti-Trafficking Directive, which requires long term, sustainable living arrangements to be provided for each trafficked child long term. This means establishing a formal best interests determination process to find a long-term solution that enables each child to recover fully and live with security and stability.

4. DELAYS IN ROLLING OUT THE INDEPENDENT CHILD TRAFFICKING GUARDIAN SCHEME

In 2017, the Government re-stated its commitment to rolling out the Independent Child Trafficking Guardian (ICTG) scheme across England and Wales. It is a measure that is in place in Northern Ireland and Scotland, but is only partly in place in England and Wales; operating in only a third of all local authority areas, creating a situation of differential and unequal support for trafficked children. The scheme has been a vital step forwards, but the Government has been slow to roll it out nationally, and the timeframe for this is yet to be confirmed. The scheme is only accessible for those children identified as trafficked, rather than all separated children. This is despite well-established failings in identification and training among professionals, which means that only those children lucky enough to be identified can benefit from an advocate.

5. ACCESS TO JUSTICE AND REMEDY

There is no publicly available data on the proportion of legal cases for modern slavery offences that involve acts perpetrated against children. This gap in data undermines the ability to understand the scope and nature of child trafficking. However, it is believed that convictions in children's cases in particular are not proportionate with the number of victims. A review of how the CPS handles cases found that there was a "silo approach" with child sexual exploitation being dealt with separately from other exploitation types, as well as a general need for better support for victims.³⁹

Child victims of trafficking continue to be treated as defendants rather than victims in the UK justice system. This criminalisation of victims occurs despite the CPS guidance stating: "If the defendant is a child victim of trafficking/slavery, the extent to which the crime alleged against the child was consequent on and integral to his / her being a victim of trafficking / slavery must be considered. In some cases, the criminal offence is a manifestation of the exploitation."⁴⁰ Although section 45 of the Modern Slavery Act 2015 introduces a defence for victims, including children, who are compelled to commit criminal offences, there are serious shortcomings in the implementation of the non-punishment principle. These include few safeguards against arrest or prosecution at the earliest stages of the criminal justice process; very low levels of awareness among prosecutors, police, defence solicitors and frontline practitioners; and little monitoring of

³⁹ Her Majesty's Crown Prosecution Service Inspectorate, *The CPS response to the Modern Slavery Act 2015*, December 2017, para 1.9

⁴⁰ See: http://www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling.

Also: UNICEF UK, *Victim not criminal: trafficked children and the non-punishment principle in the UK*, 2017. https://downloads.unicef.org.uk/wp-content/uploads/2017/05/Unicef-UK-Briefing_Victim-Not-Criminal_2017.pdf.

the use of the presumption against prosecution or the statutory defence across the UK. Cases involving trafficked children being convicted continue, which is deeply concerning.

6. SUGGESTED QUESTIONS TO THE GOVERNMENT

- Does the Government intend to urgently address the funding gap for children's services and ensure that funding for prevention and early intervention services are maintained to protect child victims of trafficking and prevent children becoming more vulnerable to exploitation and abuse? Will the Government also provide funding for specialist care of trafficked children, including specialist accommodation and access to psychotherapy and counselling, at the local authority level, so that a positive decision in the NRM is linked to specialist support?
- Given that the Independent Child Trafficking Guardian (ICTG) scheme is currently operating in only a third of all local authority areas in England and Wales, what is the Government's time frame for national roll-out of this scheme? Does the Government intend to extend the scheme to provide a comprehensive, rights-based independent legal guardianship service for all separated and trafficked children and young people up to a minimum of 21 years old?
- Has the Government considered putting in place a formal best interests determination process to find a long-term solution that enables each child to recover fully and live with security and stability?
- What changes is the Government planning to make to the NRM to ensure that it is fit-for-purpose for trafficked children; that decisions are made by trained multi-agency child protection actors under the existing child protection framework (such as in a Multi-Agency Safeguarding Hub, or equivalent) rather than by central Government?