



Company Registration No: NI. 36868
Inland Revenue Charity No: XR 11970

NICEM SUBMISSION

Review of the National Referral Mechanism

**DOJ
July 2014**

July 2014

Introduction

The Northern Ireland Council for Ethnic Minorities (NICEM) is an independent non-governmental organisation (NGO). As an umbrella organisation, we represent the views and interests of black and minority ethnic (BME) communities. Our mission is to work to bring about social change through partnership and alliance building, and to achieve equality of outcome and full participation in society.

Our vision is of a society in which equality and diversity are respected, valued and embraced, that is free from all forms of racism, sectarianism, discrimination and social exclusion, and where human rights are guaranteed.

Consultation Response

a) Identification

Is the identification and referral process for potential adult and child victims effective?

Identifying victims of trafficking is a notoriously difficult process, with the true number of victims likely being far higher than the number that are identified. Nevertheless, there is clearly a deficiency in the identification and referral of trafficking victims in the UK. A significant disparity exists between the number of potential victims encountered and the number that are referred onto the NRM: for example, the UKHTC encountered 2255 potential victims in 2012, but only 402 of these victims received a 'positive conclusive decision'.¹ Furthermore, it is apparent that the current system for identifying potential victims is making little headway into uncovering the so-called 'dark figure'; that is, the true number of victims of trafficking in the UK. While 1746 potential victims were referred to the NRM in 2013, estimates suggest that the true figure of trafficked individuals could be 5000 or more.²

Child victims are particularly underserved by the NRM, with criticism being directed against the rigid utilisation in Britain of the UKHTC and the UK Visas and Immigration as competent authorities, rather than utilising local authorities' children's services for referring trafficked children.³ Indeed, the Home Office generally has been criticised as being the wrong department for handling trafficked children and arguments have been made for government departments concerning children to handle

¹ Serious Organised Crime Agency (SOCA), 'UKHTC: A Strategic Assessment on the Nature and Scale of Human Trafficking in 2012' (2013)
<http://www.ecpat.org.uk/sites/default/files/ext-6538_ukhtc_strategic_assessment_on_human_trafficking_2012_v1.01.pdf> accessed 26 June 2014, p.4

² Sally Lipscombe and Jacqueline Beard, 'Human Trafficking: UK Responses' (2014)
<www.parliament.uk/briefing-papers/sn04324.pdf> accessed 26 June 2014, p.4

³ Anti-Trafficking Monitoring Group, 'Wrong Kind of Victim? One Year On: An Analysis of UK Measures to Protect Trafficked Persons' (2010)
<www.antislavery.org/includes/documents/.../1_atmg_report_for_web.pdf> accessed 26 June 2014, p.10

this issue instead.⁴ The mishandling of child victims of trafficking is particularly worrying, as it can result in the child being convicted of offences that they have been coerced into committing (a phenomenon that is discussed further below). In the case of *L, HVN, THN, T and R (The Children's Commissioner for England)*,⁵ four convictions of children were overturned upon determining that they were victims of trafficking, a fact that authorities and the NRM had failed to uncover prior to conviction. Indeed, the judge stated regarding one defendant's case that an abuse of process argument would likely have succeeded at trial had his victimhood been known.⁶

It is also notable that a lack of experience amongst the legal profession on the issue of trafficking may affect the identification of victims. In the abovementioned case, one defendant was not referred to the NRM because her solicitor advised her that approaching the police could result in her facing worse charges than those she already faced, if her submission was determined to be false.⁷ This lack of experience amongst the legal profession may also explain the dearth of trafficking convictions in Northern Ireland. The provision of training on the recognition and entitlements of potential victims of trafficking to relevant legal professionals could alleviate these problems.

NICEM feels that there is a need for greater NGO involvement in Northern Ireland, as part of a victim-oriented approach to identifying child victims of trafficking. This itself should form part of a move towards ensuring greater expertise amongst both first responders and those likely to encounter potential victims, such as relevant members of the legal profession. The provision of training would be beneficial.

Is the role of First Responders in identifying and referring potential victims to the NRM effective?

As has been indicated above, there are deficiencies in how competent authorities operate in handling potential child victims of trafficking. Furthermore, the above-mentioned statistics also indicate a significant gap between the number of individuals being identified by competent authorities and the number who are referred on to the NRM. While it is to be expected that not all victims will be referred to the NRM, the fact that only a small fraction are referred seems to be evidence of an ineffective system, particularly in light of the fact that the true number of trafficking victims is likely far higher even than the number initially encountered by competent authorities. Indeed, the Anti-Trafficking Monitoring Group has indicated a number of inconsistencies in the referral of potential victims by competent authorities in recent years; there is a disproportionately high positive grant rate for men (95% as compared to 41% for women in 2010), European victims and victims of forced labour.⁸

⁴ Anti-Trafficking Monitoring Group, 'All Change: Preventing Trafficking in the UK' (2012) <www.antislavery.org/includes/.../cm.../atmg_all_change_prevention.pdf> accessed 26 June 2013, p.64

⁵ [2013] EWCA Crim 991, [2013] WLR(D) 249

⁶ Ibid, para.45

⁷ Ibid, para.72

⁸ Anti-Trafficking Monitoring Group, 'Briefing: Discrimination in the Identification Process' (2010)

<www.antislavery.org/includes/documents/cm_docs/.../discrimination.pdf> accessed 26 June 2014, p.1

Furthermore, there is evidence to suggest that competent authorities impose an arbitrary time limit for individuals to come forward as victims of trafficking, with those who failed to approach the authorities within an undetermined amount of time being recognised as victims of trafficking in fact, but not for the purposes of the NRM.⁹ This is contrary to the Convention on Action Against Trafficking in Human Beings 2005, the basis of the NRM, which does not place a temporal limit on victimhood of trafficking.

NICEM would encourage relevant authorities to ensure that discriminatory practices are not conducted in determining whether or not victims should be referred. Furthermore, NICEM emphasises that the imposition of an apparent time-limit on victims to come forward and be identified is beyond the terms of the Convention upon which the NRM is based.

How can the NRM process encourage more victims to come forward, be identified and support criminal investigations?

Eliminating the connection between the NRM and the Home Office is vital to any true attempt to encourage more victims to come forward. There is significant evidence to suggest that asylum and trafficking decisions become intermingled when conducted by the UK Visas and Immigration (previously the UK Border Agency). Stepnitz indicates that the current system has the potential to ‘confuse and conflate’ the issues of trafficking and asylum for the decision-maker. Indeed, Stepnitz relates that many NRM and asylum decisions use the exact same text, with NRM decisions often using asylum-specific terminology, such as ‘risk on return’.¹⁰ Evidently the relationship between the Home Office and the NRM can only deter potential victims from non-EEA countries from coming forward, if they feel that a positive outcome from the NRM will depend on: subjecting themselves to asylum proceedings, cooperating with police authorities in investigating their complaint and on the believability of their testimony.

Regarding this improper linking of asylum and trafficking determinations, it is notable that the proposals for a potential Human Trafficking (Scotland) Bill suggested a set of ‘Survivors’ Standards’ that would expressly prevent assistance from being made dependent upon the victim’s cooperation with criminal investigations or ‘any proceedings not concerned with the trafficking situation’. A statutory confirmation that asylum and criminal proceedings would not become conflated with trafficking decisions could greatly encourage victims to come forward.

Another way of encouraging more victims to come forward and potentially cooperate with criminal investigations would be to create a legislative commitment immunising victims of trafficking from prosecution for offences that they have committed as a consequence of being trafficked. Article 26 of the Convention on Action Against Trafficking obliges states to provide for the possibility that victims of trafficking may not be prosecuted for acts that they have been compelled to commit. This is reinforced by Article 8 of EU Directive 2011/36/EU, which takes a stronger

⁹ *ibid*, p.2

¹⁰ Abigail Stepnitz, ‘A Lie More Disastrous Than the Truth: Asylum and the Identification of Trafficked Women in the UK’ (2012) 1 Anti-Trafficking Review <http://www.antitraffickingreview.org/journals/images/documents/issue1/TheReview_article6.pdf> accessed 26 June 2014, p.112

position, compelling authorities to ensure that competent national authorities are entitled not to prosecute for such acts.

However, it is evident that victims of trafficking are often rigorously pursued by the criminal justice system for such acts. Research conducted by the Anti-Trafficking Monitoring Group (ATMG) has illustrated that prosecutions for these acts ‘may not be as uncommon as the Government purports’, particularly where offences are consequent from forced labour in cannabis factories; the ATMG noted multiple examples of judges accepting that the defendants were trafficked and coerced, before giving them a significant custodial sentence. One cannot expect victims to come forward if they are to risk a prison sentence, which may have serious consequences for their ability to rebuild their lives.¹¹

Again, the proposed Human Trafficking (Scotland) Bill, Section 7, suggests that any future legislation should include a presumption against prosecuting victims, except where it is ‘strictly necessary and in the public interest to do so’. A provision of this kind could have a profound beneficial effect on the number of victims coming forward and supporting investigations.

Furthermore, the potential benefit of a two-tier system within the NRM in allowing data to be gathered on potential victims who are reluctant to be identified is discussed in section f), below. Arguably, potential victims may be more likely to approach the mechanism if they remain anonymous for the initial stages of the process.

NICEM feels that the relationship between the Home Office and the NRM should be reconsidered, as improper decision-making may be occurring as a result of this. Furthermore, victims of trafficking should be immune from prosecution for any actions they have performed as a consequence of being trafficked. Any revisions on this area could draw on the contents of the Human Trafficking (Scotland) Bill, which proposes provisions that are more in the line with the spirit of the Convention Against Trafficking.

b) Access to Support

Who should be entitled to access victim support through the NRM?

It is important to emphasise that even if an individual does not qualify for asylum, or if they have sought to be identified as a victim of trafficking a long time after the alleged offences took place, this should not be seen as disqualifying them from accessing victim support through the NRM. The Anti-Trafficking Monitoring Group has noted that while victims who have escaped their subjugators prior to approaching the NRM are not in need of immediate support, such as housing or emergency medical treatment, they are still entitled, under the Convention, to support by means of legal redress, compensation, counselling and so forth.¹² NICEM encourages the removal of time-based restrictions on identifying victims of trafficking and the explicit rejection of any conflation of asylum and trafficking case outcomes.

¹¹ Anti-Trafficking Monitoring Group, ‘In the Dock: Examining the UK’s Criminal Justice Response to Trafficking’ (2013)
<www.antislavery.org/includes/.../cm.../i/inthedock_final_small_file.pdf> accessed 26 June 2014, p.94

¹² Op cit n 3, p.40

Are the current thresholds for assessing an individual as a victim appropriate – or are they too restrictive/open to abuse?

There is evidence to suggest that the current thresholds for assessing victimhood are unduly restrictive. In 2013, there were 1746 referrals to the NRM.¹³ Of these 1746 referrals, only 542 individuals were positively identified as having been trafficked, a figure representing less than a third of those referred to the NRM.¹⁴ It has also been noted above that certain victims, depending on factors such as their gender and country of origin, are less likely to receive a positive outcome than others. These figures ostensibly indicate that the NRM's current thresholds for assessing victims are too restrictive and that they may even be discriminatory.

This problem is exacerbated by the fact that there is no internal mechanism for appealing NRM decisions. The only method for questioning such a decision is, therefore, taking a judicial review. Considering the complicated nature of judicial review, the expense it generates both in time and money, and the limited power of its findings, this is a method of appeal that is wholly unsuitable for potential victims of trafficking. Consequently, many wrongly assessed victims may be simply dismissed by the current system.

NICEM feels that current thresholds for identifying victims may be overly restrictive and potentially discriminatory. The provision of further training and guidance to relevant decision-makers may mitigate this problem. Furthermore, the immediate provision of an NRM appeals process must be undertaken to ensure that fault decision-making is rectified before victims are deported or prosecuted.

c) Data

Is there effective victim data collection and data sharing between relevant partners?

It is to the credit of the NRM that data on those referred to the mechanism is disaggregated by country of origin and the type of exploitation claimed by the victim, including separate categories for the exploitation of minors. However, it is concerning that similar statistics are not reproduced on those who receive a positive outcome from the mechanism. Indeed, the NRM's 2013 report failed to provide any statistics on the number of referrals that generated a conclusive positive outcome.¹⁵ Considering the difficulty in establishing the extent of trafficking in the UK, failing to provide comprehensive data on the offences that are confirmed constitutes a serious omission.

It is also notable that data collection via the NRM alone cannot hope to achieve a realistic perspective on the true number of trafficking victims. While the UKHTC provides data on referrals and outcomes via the NRM, it lacks the power to request data from other government agencies, thus limiting its ability to build a truer picture

¹³ National Crime Agency, 'United Kingdom Human Trafficking Centre: National Referral Mechanism Statistics 2013' (2014)
<<http://www.nationalcrimeagency.gov.uk/publications/139-national-referral-mechanism-statistics-2013/file>> accessed 26 June 2014, p.2

¹⁴ This figure is gathered from the statistics reports conducted on three-monthly basis by the UKHTC, available at <http://www.nationalcrimeagency.gov.uk/search-results?searchword=nrm&searchphrase=all>

¹⁵ Op cit n 10

of the scale of victimisation.¹⁶ A data collection technique that goes beyond the simple figures of referrals and outcomes would provide a more useful picture of the scale of trafficking in the UK.

There is also evidence to suggest that data-sharing amongst relevant authorities seeking to tackle trafficking is inadequate. The ATMG has highlighted how law enforcement bodies have been hindered in their work by the reluctance of government departments to release relevant information.¹⁷ Indeed, law enforcement officials may be investigating the same individual as another department without either being aware that this is the case, thus hindering the potential for a concerted approach.¹⁸

NICEM would encourage any efforts to ensure greater accuracy of data-collection. This would be the facilitation of data-sharing between the UKHTC and relevant government agencies. Steps should be taken to ensure that legal authorities are not hindered in their work by a lack of awareness of relevant data.

Can and should data captured via the NRM better support the wider modern slavery threat assessment and intelligence picture. If so, how?

The National Crime Agency (NCA) used NRM data in its most recent threat assessment of human trafficking.¹⁹ However, its analysis was limited to stating that the number of referred individuals had risen since the previous year. This seems a superficial use of the statistics; the increasing number of potential trafficking victims could be used to inform the threat assessment's prioritised threats and its forecast of how these threats are likely to develop in the next three years.

Additionally, data collected under the NRM would be better able to support the wider threat assessment and intelligence picture if comprehensively disaggregated data on the number of positive outcomes from the NRM was made available. This could assist efforts at unveiling the true extent of the various forms of exploitation for which trafficking is conducted, particularly child trafficking.

NICEM supports wider use of data captured via the NRM in an effort to build a better picture of the true scale of trafficking in the UK. Any steps taken toward this end should also ensure that all NRM referral and outcome data is disaggregated by gender, age and country of origin.

d) Decision making

Is the current decision-making process, including quality and consistency of decision-making, effective and timely?

The quality and effectiveness of decision-making under the NRM has been addressed above, insofar as there is evidence to suggest prima facie discrimination amongst particular categories of potential victim in determining whether or not they

¹⁶ Op cit n 4, p.26

¹⁷ Op cit n 11, p.66

¹⁸ Ibid

¹⁹ National Crime Agency, 'National Strategic Assessment of Serious and Organised Crime 2014' (2014) <<http://www.nationalcrimeagency.gov.uk/publications/207-nca-strategic-assessment-of-serious-and-organised-crime/file>> accessed 26 June 2014, p.26

have been trafficked. Again, this problem is exacerbated by the lack of an appropriate means of appealing NRM decisions.

Furthermore, there are issues with the timing of NRM decisions. The potential conflation of asylum and trafficking decisions means that the latter may be hastened by the fast-tracking of the former, thus depriving victims of the 45 day recovery period to which they are entitled.²⁰

Additionally, NGOs are under-utilised as first responders in Northern Ireland. While some NGOs are approved first responders, key organisations, such as the Women's Federation Northern Ireland, are not. The expertise of these authorities could make a valuable contribution to the process of determining what individuals should enter the NRM.

NICEM again supports the further utilisation of NGOs as first responders in Northern Ireland. Additionally, steps should be taken to ensure that potential victims receive the entirety of the recovery period to which they are entitled.

Is there a relationship between an individual's claim for asylum and their trafficking claim? If yes, what impact, if any, does this have on the outcome of the trafficking decision?

It has been noted above that there is a clear relationship between an individual's asylum and trafficking claims. Asylum and trafficking decisions can draw unnecessarily from one another, or even duplicate each other's text. Asylum-specific terminology has also appeared in the text of trafficking decisions. The impact of this conflation upon the outcome of trafficking decisions is clear – research conducted by the ATMG has suggested that some frontline officers' opinions of the believability of victims' accounts may be coloured by their immigration status.²¹ Decisions on trafficking victimhood and whether that individual may claim asylum are processed by the same immigration official, thus making a conflation of the two decisions almost inevitable.²²

Furthermore, while statistics are unavailable on how many individuals who are refused asylum are also not referred to the NRM, there are numerous individual examples of victims who have been rejected on both counts despite enduring treatment that would strongly suggest that they have been trafficked.²³ Indeed, the potential conflation of asylum and trafficking claims may be evidenced by and also partially explain the disparity in positive trafficking decisions between EEA and non-EEA citizens; in 2012, over 80% of referred EEA citizens received a positive outcome, whereas for non-EEA citizens this figure was less than 20%.²⁴

²⁰ The Northern Ireland Council for Ethnic Minorities (NICEM), 'Submission to Department of Justice Consultation on Human Trafficking and Slavery: Strengthening Northern Ireland's Response' (2014) <<http://nicem.org.uk/wp-content/uploads/2014/05/NICEM-Response-to-DoJ-Consultation-on-Human-Trafficking-and-Slavery.pdf>> 26 June 2014, p.7

²¹ Op cit n 11, p.131

²² Op cit n 10, p.111

²³ Ibid p.115

²⁴ Anti-Trafficking Monitoring Group, 'Hidden in Plain Sight: Three Years on: Updated Analysis of UK Measures to Protect Trafficked Persons' (2013) <http://www.amnesty.org.uk/sites/default/files/atmg_hidden_in_plain_sight_oct_2013.pdf> accessed 26 June 2014, p.8

Additionally, it is notable that while current Home Office guidance for frontline staff emphasises that a positive trafficking outcome does not guarantee asylum status, the guidance does not warn staff members against drawing an inverse inference; that is, that an individual's ineligibility for asylum means that they have not been trafficked.²⁵ Consequently, there is much to suggest that the current proximity of asylum and trafficking decision-making is resulting in trafficking outcomes for failed asylum seekers being prejudiced.

Finally, the potential for a victim to be re-trafficked upon deportation to their state of origin should be a strong consideration when making asylum decisions. In the case of *PO (Nigeria) v The Secretary of State for the Home Department*, an Asylum and Immigration Tribunal was criticised for not appropriately considering evidence related to potential re-trafficking.²⁶

NICEM observes that the conflation of asylum and trafficking decisions has an inappropriate and deleterious effect on victims of trafficking. Steps should be taken to diminish this connection and to ensure that relevant trafficking considerations, such as the potential for a victim to be re-trafficked, are taken into account in determining asylum eligibility.

Should the Competent Authority decision-maker make a decision by reference to a 'reasonable degree of likelihood' test instead of a 'balance of probabilities' test?

NICEM feels that it is not the standard of the test that is leading to so many questionable outcomes, but rather the application. As noted above, there is evidence to suggest that the conflation of asylum and trafficking decisions prejudices those applications. Furthermore, it has previously been stated that there is prima facie discrimination in terms of the gender and country of origin in determining applicants' outcomes.

Authorities seeking to review the NRM should be mindful of the subtler influences of institutional discrimination and the effect of current heated anti-immigration rhetoric on the decision-making process, particularly in light of the conflation of asylum and trafficking decisions. There may be a discriminatory culture within the UK Visas and Immigration (previously the UK Border Agency) that affects decision-making, as was alleged by one UK Border Agency worker in 2010.²⁷ This allegation resulted in an investigation by the Professional Standards Unit (PSU), which criticised one Asylum team's possession of a stuffed toy 'grant monkey'. The investigation also notes that the complainant's informal complaints to the agency were undocumented and that two other staff members withdrew their participation after initially approaching the PSU with information. Furthermore, the staff members' union advised them not to provide any evidence to or cooperate with the PSU. These factors may all be viewed as evidence of a culture of discrimination and subsequent repression of information existing within the Agency. Consequently, it may be

²⁵ Home Office, 'Victims of Human Trafficking: Guidance for Frontline Staff' (2013) <https://www.gov.uk/government/uploads/.../Human_trafficking.pdf> accessed 27 June 2014, p.25

²⁶ [2011] EWCA Civ 132, [2011] Imm AR 466, para.41

²⁷ UK Border Agency Professional Standards Unit, 'An investigation into the allegations made by Louise Perrett about her experiences working for the UK Border Agency' (2010) <<https://www.gov.uk/government/uploads/.../investigation-report.pdf>> accessed 27 June 2014

advisable to ensure that any advice provided to decision-makers warns them against basing trafficking outcome decisions on immigration status or other attributes of the applicant. The provision of training on these matters would also be desirable.

NICEM would encourage a greater analysis of how the current standards of decision-making are being applied, with a view to determining how ostensibly discriminatory outcomes are being produced.

Should a finding that a person is the victim of trafficking be uncontestable by the CPS in any subsequent prosecution against the victim?

It has been noted above that the prosecution of victims of trafficking is a widespread and disturbing phenomenon in the UK, which rests uneasily with its Convention obligations. If a victim is to be prosecuted, it would make little sense for the prosecution to be able to question their victimhood when a body has already decided upon this issue. It is paradoxical for an individual to be provided with aid and resources on the basis of their status as a trafficking victim, only to be prosecuted and perhaps convicted of offences on the basis that they are not a victim of trafficking. Such inconsistencies are contrary to the principle of legal certainty.

NICEM agrees that determinations of trafficking victimhood should not be contestable in any subsequent prosecutions against victims, although would also seek to emphasise that it supports the provision of immunity for victims against prosecution for actions conducted as a result of their having been trafficked.

e) Level of Support

What support should adult victims receive once they are referred into the NRM (is the 45-day reflection and recovery period appropriate)?

It should be noted here that some potential victims do not receive the 45-day reflection period to which they are entitled. It has been mentioned above that the conflation of asylum and trafficking decisions, combined with the fast-tracking of asylum decision-making, may result in some applicants not receiving the reflection period to which they are entitled.

Regarding the 45-day period itself, it is felt that this is an adequate time-period in which to expect seriously traumatised individuals, as trafficking victims frequently are, to recover. Indeed, appropriate counselling services may be difficult to obtain within the 45-day period, with one provider commenting that obtaining an experienced counsellor within this period is 'almost impossible'.²⁸ Even where counselling and support is provided, it can often remain incomplete due to the restrictions of the time period; one worker providing support to male victims of trafficking commented that 'it [addressing victims' trauma] can be a real challenge with the 45-day cut off'.²⁹ This is particularly the case for male victims, as they can show initial reluctance to participate in counselling or admit their need for help. Other

²⁸ Gayle Munro and Chloe Pritchard, 'Support Needs of Male Victims of Human Trafficking: Research Findings' (2013) <<http://www.nrpfnetwork.org.uk/SiteCollectionDocuments/Support%20needs%20of%20male%20trafficking%20victims%20-%20FINAL.pdf>> accessed 27 June 2014, p.18

²⁹ Ibid, p.25

European states, such as Italy, have a 3-month recovery period, a period of time that has been supported by the UK Parliamentary Joint Committee on Human Rights.³⁰

NICEM feels that adult victims of trafficking should receive a full range of support, in the form of appropriate counselling and safe accommodation. It is felt that the time-period allowed is too restrictive to enable such support to be fully pursued in all cases, thus it should be extended. It is noted that Italy provides a three month recovery period.

Should further support be provided, following the end of the reflection and recovery period, to help victims move on with their lives, and if so what could be provided?

Before discussing potential post-recovery support, it must be noted that the ending of prosecutions against victims for offences they have committed as a consequence of being trafficked is vital to allowing them to move on with their lives. A criminal conviction, suspended or otherwise, is a serious barrier to future employment and societal participation.

Regarding further support, it would be helpful to provide victims with appropriate counselling services. It can be difficult for some individuals, particular male victims of sexual exploitation, to access the specific and expensive services that they need.³¹ Furthermore, if victims of trafficking are to remain in the country, then the provision of English-language lessons could be invaluable to their recovery. Research conducted by the Salvation Army indicated that 86% of male trafficking victims required interpreting services, with one support worker stating that English language education was the ‘biggest need’ of these trafficking victims.³²

Furthermore, victims who have received a positive outcome from the system and are granted discretionary leave to remain in the UK for 12 months will need legal support in order to ensure access to benefits and to pursue the extension of this leave where appropriate. NICEM supports the provision of support beyond reflection and recovery period, both in terms of medical and legal provision, as the debilitating effects of trafficking extend far beyond this period.

What are the opportunities and challenges in providing support beyond the reflection and recovery period?

The most notable challenge to any support service is its cost; as has been noted above, counselling services can be an expense, especially when they must be tailored to the specific needs of differing victims of trafficking. However, this monetary expense is greatly outweighed by the value of rebuilding the self-respect and operational capacity of an individual who has been exploited. With appropriate counselling, provided until completion rather than until the end of the recovery period, and English language lessons, trafficking victims remaining in the country may become capable of fully participating in Northern Irish society. Indeed, attempts to devolve victim support into cost-saving endeavours by failing to provide fulsome

³⁰ Tom Obokata, ‘Analysis of Current Responses to Human Trafficking in Northern Ireland’ (2013) <http://nicem.org.uk/wp-content/uploads/2014/02/NICEM_Trafficking_Report.pdf> accessed 27 June 2014, p.15

³¹ Op cit n 29, p.18

³² Ibid, p.26

support may be counterproductive; substance abuse³³, homelessness³⁴ and aggression³⁵ are prevalent amongst trafficking victims, meaning that any costs “saved” by denying these services are likely to be incurred elsewhere, through emergency support services or the criminal justice system.

NICEM emphasises that mere monetary considerations should not be allowed to outweigh the need for specific and tailored support services amongst trafficking victims. This can prove a counterproductive exercise, both in terms of cost-saving and in terms of effective victim support.

f) Governance

Which organisation/organisations is/are best placed to: manage and administer the NRM; and make ‘competent authority’ decisions on trafficking claims?

Northern Ireland currently makes insufficient use of NGOs in the role of identifying victims of trafficking³⁶, particularly in light of the fact that some NGOs, such as the Poppy Project and Kalayaan, are utilised for this purpose in England.³⁷ Considering the relevant expertise that many of these NGOs have, greater use of these organisations as first responders should be made. Indeed, the fear that many victims have of law enforcement authorities and asylum officials means that they may be more likely to approach these organisations than the UKHTC or Home Office bodies.³⁸

Again, as has been mentioned above, the role of the Home Office and asylum officials in referring victims to the NRM involves a conflict of interests and a conflation of asylum and trafficking outcomes. Consequently, it is inappropriate for this body to have a role in determining trafficking victimhood.

Regarding the management and administration of the NRM itself, NICEM feels that there is room to involve smaller organisations, with more direct experience of dealing with potential victims, in the NRM’s process. The specific expertise of these organisations could inform the process of determining whether or not victims have been trafficked. It is notable that there are many groups, such as a number of NICEM’s member groups that, while lacking the capacity to provide their own formal structure for victim identification, could contribute their expertise and experience to the NRM structure, upon receiving appropriate training.

The case for including more informal structures within the NRM has also been made by the Centre for Social Justice (CSJ). The CSJ has recommended the creation of a ‘two-tier’ system within the NRM, so that data could still be collected on potential victims who do not wish to be formally recognised by the mechanism. A first, informal tier could collect this information anonymously, whilst a second, formal tier would involve a formal referral and access to support services, with the potential

³³ Ibid, p.14

³⁴ Ibid, p.23

³⁵ Ibid, p.14

³⁶ Op cit n 30, p.15

³⁷ Ibid, pp.18-19

³⁸ Ibid, p.18

victim's consent.³⁹ Consequently, important data could still be collected by the NRM, even where potential victims are reluctant to be identified.

NICEM supports the creation of a system that involves smaller, experienced organisations in order to capitalise on their expertise. Furthermore, the creation of a two-tier system would be useful in ensuring that data-collection is not hindered by victims' desire to remain anonymous.

What more can be done to strengthen links between organisations involved in the identification and support of victims?

It has been noted above that organisations involved in identifying victims of trafficking can have difficulty in obtaining relevant data from government departments; it is vital that organisations involved in identification have full access to any data that may assist them in this task.

Further regarding this issue, an improved national strategy and structure, along with universal training on how to identify trafficking victims, may mitigate the inconsistent expertise amongst police forces on how to identify and treat potential victims.⁴⁰

The CSJ has identified good practice in facilitating data-sharing between relevant agencies and organisations (such as health services, school staff, police services etc.). Gwent police established a Consultation Group, which facilitates data-sharing amongst these groups in order to develop a broader and more accurate perspective on trafficking in the area.⁴¹

NICEM supports the provision of universal training and strategies in order to ensure that expertise amongst police forces on identifying victims is not inconsistent. Furthermore, the practice of generating a Consultation Group could be drawn upon to generate a body/bodies for facilitating links between identification and support organisations.

Are the links with wider organisations (first responders, victim support, sub-contractors etc.) effective and do they support successful identification of and help for victims?

As stated above, the NRM could foster greater involvement with NGOs in Northern Ireland as first responders. This would be particularly proper in the case of identifying children who are potential victims of trafficking. It has also been highlighted, in section e), that some victims have difficulty in accessing relevant counselling services within the 45-day reflection period. It seems that victims' needs and the policy of the NRM conflict on this issue, meaning that victims may not receive the help they need.

³⁹ The Centre for Social Justice (CSJ), 'It Happens Here: Equipping the United Kingdom to Fight Modern Slavery' (2013)
<[http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJ_Slavery_Full_Report_WEB\(5\).pdf](http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJ_Slavery_Full_Report_WEB(5).pdf)> accessed 27 June 2014, p.77

⁴⁰ Ibid, p.142

⁴¹ Ibid, p.143

What are the advantages and disadvantages of placing the NRM onto a statutory footing and providing victims with appeal rights?

Significant advantages could be gained through the introduction of an appropriate, comprehensive and victim-oriented statute. This would provide an opportunity to change current counterproductive practices, such as the relatively short recovery period. Furthermore, statute could provide for a greater role for NGOs as first responders and NRM contributors, along with a process for approving NGOs for this purpose. Additionally, the process of introducing a statute in Northern Ireland would involve the production of an Equality Impact Assessment, thus allowing an opportunity to consider the equality implications of the NRM's proposed structure. Finally, creating a statute for the NRM would provide a chance to more fully implement the provisions of the Council of Europe Convention, such that requiring states to allow the possibility of victims being immune to prosecutions for offences committed as a consequence of being trafficked. Such legislation could draw from the proposed Scottish legislation on this issue, addressed above.

Regarding the introduction of appeal rights into the mechanism, this could only have beneficial effects for victims. It is notable that 25% of asylum cases are overturned on appeal⁴², thus it seems likely, considering the conflation of asylum and trafficking decisions, that victims are being failed by a system that leaves no realistic prospect of appeal.

NICEM feels that the consideration of an NRM statute could provide an opportunity to address many of deficiencies addressed throughout this response.

⁴² Op cit n 24, p.19