



Federation Northern Ireland

## Review of the National Referral Mechanism – a response by Women's Aid Federation Northern Ireland

27<sup>th</sup> June 2014

### a) Identification:

#### (i) Is the identification and referral process for potential adult and child victims effective?

- In its present state, the process of identification and referral is not effective – this is evidenced by the low numbers of victims being identified and referred to the NRM in Northern Ireland, and the admission by the PSNI that the victims being identified are only the tip of the iceberg.

What can be done to make the process more effective:

- Further training of PSNI to identify victims of human trafficking and better understand the complexities of trafficking. In our experience, there has not been sufficient training of police at all levels, rather such training is currently limited to certain officers. This is in spite of the fact that any patrolling officer has the potential to come into contact with a victim of trafficking in the course of their work, and it is vital that all responding officers are able to both identify victims and act effectively as first responders in such instances.
- If there were more non-statutory first responders, more victims would be identified. Non-statutory organisations with expertise in supporting victims of abuse or violence such as Women's Aid may come into contact with trafficking victims, and such organisations are well placed not only to identify a victim, but also to refer better by gathering and recording information about a victim effectively.
- It is crucial that NRM referral form indicators are filled out accurately by first responders with sufficient information on the identified victim. If the referral forms are not filled in properly then that has a huge negative impact, particularly on reasonable grounds decisions. We have identified instances in which victims of trafficking have been given negative decisions by UKVIS because the information simply isn't there on the forms to support a positive decision. The NRM process is only as effective as the information that is fed into the process, and UKVIS can only deliberate on the information that they are given. UKVIS aren't a support organisation and they shouldn't need to be, however it is important that there are support organisations embedded in the referral process so that victims can receive proper support and that best evidence and information can be gathered in an appropriate manner – we believe that in this instance, the caring approach is also the most efficient approach. It is extremely regrettable that deficiencies in paperwork and recording are having such a negative impact on victims of human trafficking.

- We have particular concerns in this regard relating to potential victims who are placed in NASS accommodation while seeking asylum. If the right questions aren't being asked by staff then it is likely that victims of trafficking who are in the asylum process aren't being identified or referred. Given the nature of human trafficking and the fact that many victims will also be non-nationals who may not reside legally in the UK, it is vital that anyone who works in the asylum process should be adequately trained to identify and refer potential victims of trafficking to the NRM.
- We wish to note that Women's Aid has decades of experience supporting victims of domestic violence, and our workers are trained to gather information from potential victims in an appropriate and supportive manner which does not re-victimise them. Staff regularly use the DASH form as a tool to record the extent and nature of abuse of victims in order to carry out risk assessment and refer to MARAC. Our expertise in this area could be put to great use as first responders in trafficking cases, as our communications with victims and skills in recording information would enhance the referral process. The tools for identifying and referring victims of trafficking are in place, but experience and training are crucial to using those tools correctly and making the identification and referral process effective.

(ii) Is the role of First Responders<sup>1</sup>, in identifying and referring potential victims to the NRM, effective?

- As stated above, first responders are only as effective as the training they have received in how to identify and refer a victim, and the process is only effective if the information provided by first responders is sufficient and accurate and the documentation is filled out correctly.
- It is our view that more organisations should be designated first responders in order to broaden the scope for identifying and referring victims to the NRM. These first responders should be organisations that are in a position to identify and refer in the course of their work, such as those who have a Service Level Agreement to provide support for victims, and should have demonstrated expertise in supporting victims in line with recognised best practice. Women's Aid supports the recommendation by GRETA in this regard, which states:
 

“expand the list of First Responders by including more civil society organisations as well as agencies responsible for employment standards inspections, regulating domestic work and making licensing decisions;”<sup>2</sup>
- It would be particularly useful if expert support organisations became first responders, as this would enable organisations such as Women's Aid to support and steer women through the NRM without having to go down the criminal justice route if the victim was reluctant to do so.
- Women's Aid would also submit that our organisation is well-placed to assist and victims of trafficking through both the NRM and the criminal justice process, as we provide such

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<sup>1</sup> First Responders are those organisations who have authority to refer potential victims of human trafficking into the NRM. They include: the police, immigration, local authorities, and a selected number of non- Governmental organisations.

<sup>2</sup>[http://www.coe.int/t/dghl/monitoring/trafficking/Docs/CommitteeParties/Recommendations/CP\\_2012\\_10\\_GBR\\_en.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/CommitteeParties/Recommendations/CP_2012_10_GBR_en.pdf)

services already for victims of domestic violence who are engaging with the criminal justice system.

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

- We wish to point out that identifying / supporting victims, and engaging in the criminal justice process, are completely different things, and in our view they should not be considered together. There should be no ambiguity that support is not contingent upon engagement with police or the criminal justice system. Support should also be the primary concern for those recently identified / who have come forward.
- Furthermore, in our professional view by making the NRM process more explicitly about support, this may result in better engagement with the criminal justice system, as victims will have more confidence in the NRM process and be more likely to come forward with the reassurance that they won't be pressured into anything that might compromise their safety.
- We also endorse the recommendation by GRETA that the body for making determinations should not be the same body that makes asylum determinations ie UKVIS. GRETA recommends that the UK government should:

“entrust the identification of victims of trafficking who are illegally present in the UK to persons who are not involved in the asylum seeking procedure of the applicant, to avoid conflicts in the decision making;”

- We believe that an independent body administering the NRM would encourage more victims to come forward. Many victims may be deterred by UKVIS running the process, in spite of the good work that UKVIS do, as the perception is that their primary concern is immigration as opposed to helping victims of trafficking.
- We look with interest to developments in Scotland, where a Private Members Bill is currently being considered which could result in Scotland's withdrawal from the NRM, to be replaced with an independent Scottish commissioner to review trafficking referrals.
- It is our view that an independent panel of experts would be much better placed to make decisions on whether someone is a victim of trafficking. This may also change victims' perception of the NRM process – if the process was not solely run by UKVI, this may encourage more victims to come forward and engage with the process. Women's Aid Federation Northern Ireland would in theory be willing to be part of such a mechanism, pending detail of how such an independent panel would function.

## **b) Access to support:**

### (i) Who should be entitled to access victim support through the NRM?

- In our view all potential victims should be supported through the NRM. This should include those who have been historically trafficked. Women's Aid has identified historical cases of trafficking in women who use our services. These victims may be in our services for a number of reasons relating to violence or abuse committed against them, and it is often the case that they do not disclose that they have been trafficked for quite some time. We may have been supporting them for months or years before they feel able to disclose that they were trafficked.
- Given that historical cases of trafficking are unlikely to yield any prosecutions, as the crimes against victims may have occurred years or even decades ago, such cases are unlikely to go down the criminal justice route. Victims may not want to engage with officials at all and may be discouraged from entering the NRM if they are required to have involvement with statutory first responders. We believe that this strengthens the case for non-statutory first responders – in such cases, support organisations such as Women's Aid are ideally-placed to guide these victims through the NRM process without having to involve statutory agencies.

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

- We are not convinced by the arguments that the trafficking support process is too 'open to abuse' or that such abuse is common. While there are some cases of abuse of the NRM, in our experience the numbers of people abusing the system is small. In addition, organisations like Women's Aid have been working with victims of abuse and violence for almost 40 years, and we know what abuse looks like and how it manifests. Although the effects of abuse and violence are different depending on circumstance and each individual victim, our staff are expertly trained and have a profound understanding of abuse and its effects on victims – this includes being able to identify cases where there is in fact no abuse. Indeed we have come across such cases and have identified the issue quickly and dealt with it accordingly. Rather than legislating for the exception, we believe that the most effective way to keep a process like the NRM fit for purpose for victims and also robust to withstand attempted abuse is to make experts the gatekeepers. Expert organisations like Women's Aid have extensive knowledge and expertise that could be utilised in a process like the NRM to aid the accurate assessment of individuals engaging with the process.
- We are therefore of the view that the current thresholds should not be made any more restrictive.

## **c) Data:**

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

- The system currently in place between Women's Aid and PSNI allows anonymised information sharing, in order to aid the protection of potential future victims who may be trafficked or prevent their trafficking in the first place.
- We are largely satisfied with the standard of information sharing at the point of responding and referral. UKBA/UKVIS currently share a copy of the NRM form with us, though the form itself will have been filled out by another agency. In our experience, the information sharing between ourselves and UKBA has been very good to date. The issue mainly lies with the inconsistent quality of the information on the form itself. The utility of information sharing is contingent upon information gathering being of high quality in the first place, and this is where we feel that there is significant room for improvement.

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

- We are of the view that such information can be very useful in the wider intelligence context to prevent future trafficking, on the condition that such information sharing does not infringe the rights of victims to whom it pertains. Women's aid gathers a significant amount of wider information in the course of our support work from a women's story. This could include routes of how they got to NI, how they were hidden etc, or information on the wider trafficking context in their country. It is useful intelligence, and currently there is a verbal agreement within the trafficking engagement group to pass on such info to PSNI in an informal manner. This information is anonymised and the decision to share information is subject to the wishes of the victim herself and on the condition that sharing it will not in any way negatively impact upon that victim. Our primary concern is and must always be the wellbeing of the women that we support. To this end, we are strongly opposed to any formalised process that might contractually oblige us to share confidential information, as this would be counter to the notion that the NRM should be victim-centred.

**d) Decision making:**

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

(ii) 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?

(iii) 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?

- We believe there is an issue surrounding the quality of decision making, and it is grounded in the conflict between the asylum process and the need for a victim-centred approach when making decisions on trafficking. There is a conflict of interest for the decision maker, UKVIS, as their main business is that of immigration and asylum. While we have no doubt that UKVIS carry out their role in good faith, their lack of independence and the potential for

asylum issues to cloud trafficking decisions can and does happen. In our experience, if a woman gets a negative decision on trafficking, they usually get a negative decision on asylum a few days later. This is an established pattern, and it indicates that trafficking and asylum are being considered together and at the same time. We have serious concerns that the potential for the asylum issue to cloud and influence trafficking decisions is very real, and that if an applicant doesn't fulfil asylum criteria this might influence the trafficking decision negatively. For this reason we believe that an independent, separate competent authority should make trafficking decisions, and that the trafficking and asylum issues should be separated.

- We are also of the opinion that decisions should be made using the balance of probability as standard of proof (the standard currently being used is 'reasonable degree of likelihood')

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

- While we don't think it is reasonable for there to be a blanket ban on any prosecutions of victims of trafficking for any crime, we recommend that more cognisance is taken of the position of trafficking victims and the potential for them to be forced to commit crimes by their traffickers directly, or through necessity due to the trafficked situation that they have been placed in. No victim of trafficking should be revictimised by the criminal justice system because they have committed a crime under duress or coercion from their traffickers.
- We believe that there needs to be further guidance on this, and more detail on what circumstances would and should lead to a trafficking victim being prosecuted for a crime they have committed.

**e) Level of support:**

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

- The current situation in Northern Ireland has worked well to date in ensuring that victims have adequate reflection time in practice. This is on account of the pragmatic and flexible approach currently employed, which very often allows victims longer than 45 days (one victim whom we are supporting has been in reflection period for 2 years to date due to the circumstances of the case).
- While in practice this discretion and willingness to grant extensions does seem to be working well here, it remains a matter of concern to us that the standard period of reflection is only 45 days under the rules. As a standard reflection period, 45 days is in many cases insufficient, so it is in the interests of victims present and future for a longer and more appropriate reflection period to be codified. Victims of trafficking should not have to rely on discretionary decisions or suffer the consequences should the political opinion of the day decide to become more inflexible and grant fewer or shorter discretionary extensions regardless of the needs of victims.

- Throughout the entire decision-making process, it is essential that consultation with service support provider takes place, and support be tailored to that victim's need. This consultation is currently happening and we welcome the further development of such joint working. The views and intelligence of expert support organisations such as Women's Aid is invaluable to better understand the situation of a victim, and we believe that our views should be taken on board and used to help influence and inform the decision-making process in the NRM.

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

- Yes, we are of the view that support should be provided for as long as a victim needs and wants that support. This is in keeping with best practice on supporting victims of abuse and is also in keeping with the Women's Aid ethos. In our view, such long term support should be part of the service delivery of contracted support organisations (Migrant Help & Belfast and Lisburn Women's Aid in NI).
- Practically speaking, Women's Aid is able to facilitate this long term support, as our existing Floating Support service and other support services for women and their children affected by domestic abuse are ideal for supporting female victims of other kinds of VAWG. We are aware that Migrant Help, who support all adult male victims of human trafficking, do not currently have such support services, and we believe that they need to in order to adequately support male trafficking victims. We do not feel that one organisation necessarily needs to provide the entire wraparound service, although it is preferable and is the most beneficial to victims. Other NGOs might come into play here, and it may be useful to develop an infrastructure of follow-up support services for any victim that needs it. For instance, it might be practical to look to the expertise and capacity of the NGOs on the trafficking engagement group.
- In order for such an infrastructure to remain victim needs centred, it would be necessary to provide training to those organisations, as well as detailed guidelines on how to treat victims appropriately. Ultimately, it is essential that any support organisations works with victims to empower them to know what they want and what they don't want in terms of support.

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

- An aftercare service is important, as is an open door policy. As an organisation, Women's Aid is able to provide this as we have the mechanisms in place already as a support organisation for domestic & sexual violence and abuse.

**f) Governance:**

(i) Which organisation/organisations is/are best placed to: manage and administer the NRM; and make 'competent authority'<sup>3</sup> decisions on trafficking claims?

- At present UKVIS is the most appropriate existing body. However we would urge consideration that an independent competent authority is set up along the lines of the Scottish proposals.

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

- Further development and continued cooperation of the Trafficking Engagement Group
- Further awareness raising of Women's Aid as support providers to all adult female victims of human trafficking
- Awareness raising events targeted at people who would be in a position to identify trafficking victims (taxi drivers, hotel front of house staff, meter readers)
- Further training

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?

- Please see our earlier comments as to how this could be improved.

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

- We believe that placing the NRM on a statutory footing is positive, and that there must be reform of the appeal process which is currently lacking.
- The current situation whereby there is no right of appeal and only judicial review open for conclusive decisions is not victim-centred, is not transparent, and is very costly and onerous due to the need to go down the judicial review route.

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<sup>3</sup> The UK Human Trafficking Centre and the Home Office are Competent Authority decision makers who make trafficking decisions about potential victims who are referred into the NRM.