

## Discrimination in the identification process

The implementation of the provisions of this Convention by Parties, *in particular the enjoyment of measures to protect and promote the rights of victims*, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 3, Council of Europe Convention on Action against Trafficking in Human Beings

The National Referral Mechanism (NRM), the government's official identification process, took effect from 1 April 2009. Prior to this, NGOs and other service providers identified potential trafficked persons through their own assessment procedures, although this did not necessarily lead to 'official' recognition that someone had been trafficked. Through the new process, decisions about whether someone has been trafficked are made by the 'competent authorities', namely UK Border Agency staff, based on a referral form submitted by a 'First Responder' (certain named NGO service providers, the police, or local authorities).

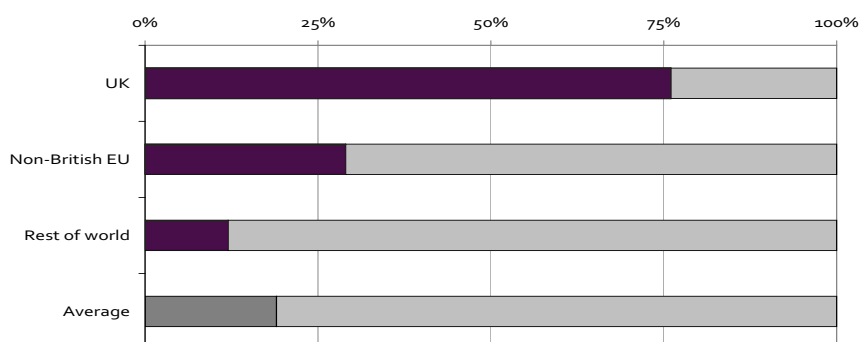
Between 1 April and 30 November 2009, 'competent authorities' made decisions on 477 cases referred to the NRM. Of those, 91 individuals were formally identified as trafficked, giving an overall positive identification rate of 19 per cent.

The UK authorities had predicted a positive grant rate of approximately 80 per cent. While 76 per cent of UK nationals referred to the NRM were officially recognised as trafficked, a breakdown of positive decisions by country of origin of referrals reveals a startling disparity between the chances of a UK national, EU national, or third-country national being officially recognised as trafficked.

Only 12 per cent of third-country nationals were officially recognised as trafficked, compared with 76 per cent of UK nationals referred into the NRM, and 29 per cent of non-British EU nationals (figure 1).

Between September 2009 and January 2010 the Monitoring Group collected case data from five agencies providing support to trafficked persons. Conclusive NRM decisions were known in 89 of the 106 cases analysed. Concerned at the apparent discrimination in the offi-

Figure 1 Positive grant rate by region of origin (UKHTC data)



The Anti-Trafficking Monitoring Group is a coalition comprising Anti-Slavery International, Amnesty International UK, ECPAT UK, the Helen Bamber Foundation, the Poppy Project, Immigration Law Practitioners' Association, Kalayaan, TARA Project and UNICEF UK. The coalition was set up in May 2009 to monitor the UK government's compliance with the *Council of Europe Convention on Action against Trafficking in Human Beings* ('the Convention'), which the UK ratified in December 2008 and which came into force in the UK on 1 April 2009.

Between September 2009 and April 2010, the Anti-Trafficking Monitoring Group consulted information from public sources, conducted 90 interviews with professionals engaged in anti-trafficking work, and reviewed the cases of 390 trafficked persons. In June 2010 the Group published *Wrong kind of victim? One year on... an analysis of UK measures to protect trafficked persons*.

cial identification process, the Monitoring Group looked at the decisions made in each of these cases in terms of gender, region of origin, and type of exploitation. All the cases analysed by the Monitoring Group concerned adults.

Of the 89 cases analysed, 48 were granted trafficked status, with the remaining 41 deemed not to have been trafficked, giving an overall positive grant rate for this sample of 54 per cent.

The Monitoring Group's analysis revealed a similar level of discrepancy based on nationality, with 88 per cent of European referrals receiving a positive decision, in contrast to just 23 per cent of referrals from African countries.

### Gender

The Monitoring Group's analysis revealed a disproportionately high positive grant rate for men of 95 per cent, more than twice that for women (41 per cent) and significantly more than the overall rate of 54 per cent.

European men represent 41 per cent of all positive decisions despite only making up 23 per cent of the sample. This is in stark contrast to African women who make up 46 per cent of all referrals, yet only 20 per cent of all positive decisions (figures 4a and 4b).

## Type of exploitation

Seventy-three per cent of cases pertaining to forced labour were found credible and granted trafficked status, with that rate increasing to 92 per cent when cases involving domestic servitude were excluded. This follows the trends seen above, with Europeans making up 88 per cent of the forced labour category, and men 80 per cent. The cases least likely to receive positive decisions are those where individuals have been subjected to multiple forms of exploitation. Such cases have a grant rate of just 17 per cent, one-third of the overall rate. All these cases involved women.

Official identification is essential if a trafficked person is to be able to exercise the rights afforded to them by the Convention; this apparent discrimination within the decision-making process is denying some trafficked persons their rights dependent on their nationality and/or gender. This practice is not only in breach of Article 3 of the Convention, but also domestic anti-discrimination legislation.

## Wrong kind of victim

In its first year of implementation, it became clear to the Monitoring Group that the UK authorities made it policy to refuse to officially recognise as trafficked individuals who had indeed been trafficked if they had escaped from their exploitative situation many months or years prior to their NRM referral. Often this was based on an unfounded presumption that such a person had no need for a reflection period or support services.

Figure 4a Referrals

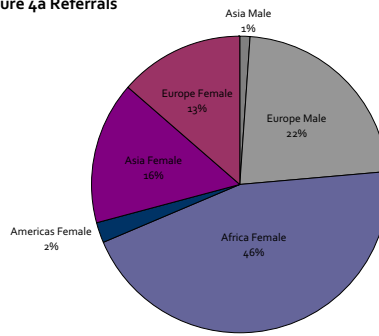
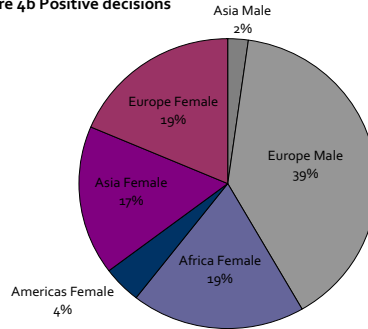


Figure 4b Positive decisions



***"Your account is consistent with that of a person who has been trafficked... but you have not reached the threshold of reasonable grounds to believe that you are a victim of trafficking for the purposes of the Convention."***

Competent authority letter to trafficked person.  
September 2009 – January 2010

The Convention does not place any time limits on 'victim' status. Anyone who has been subject to the act of trafficking as defined in the Convention is a victim of trafficking, without additional conditions attached. Further, the purpose of the mandatory reflection period is not only to enable persons still under the control of their traffickers to escape, but to en-

able all individuals about whom there are reasonable grounds to assume have been trafficked to **"take an informed decision on cooperating with the competent authorities"** (Article 13.1).

Although trafficked persons who escaped their situation prior to coming to the attention of the authorities or services may not be in need of immediate assistance such as shelter or emergency medical treatment, they still have entitlements under the Convention, such as the entitlement to assistance through the criminal justice process and the right to compensation. Equally, they may be in need of protection, *appropriate* accommodation, medical treatment, legal advice or counselling.

***"Even if it was accepted that you had been trafficked from... to the UK, and held against your will and forced to... it is not accepted that you currently qualify as a 'victim' of trafficking for the purposes of the Convention."***

Competent authority letter to trafficked person.  
September 2009 – January 2010

Not only does this arbitrary time limit imposed by UKBA violate a fundamental principle of the rule of law, that: *'Questions of legal right and liability should ordinarily be resolved by application of the law and not exercise of discretion'*, but by refusing to grant individuals who have been trafficked official status as such, UKBA is denying those individuals access to the psychological, material, legal and financial support to which they are entitled as victims of crime, and preventing them from exercising their legal rights.

The figures published by the UKHTC and the Monitoring Group's own analysis are startling. They merit further investigation by the Home Office or devolved equivalent, or the Equality and Human Rights Commissions, to check that individuals are not the subject of discrimination in the decision-making process based on their nationality, gender or experience.

The Anti-Trafficking Monitoring Group is also calling on the government and devolved administrations to:

- Restructure the administrative process of the NRM so that it acts as a multi-agency identification and referral mechanism.
- Publish statistics on NRM referrals and decisions disaggregated by region, in order that regional responses be more effective.
- Introduce the right to appeal into the identification process.
- Review the application of the definition of trafficking to ensure it reflects the UK's obligations and those devolved to home nations under the Convention and is consistently applied to all victims.
- Introduce an independent and public review of all negative decisions made by 'competent authorities' to ensure the accountability of decision-makers and the quality of decisions.

## Notes

<sup>1</sup> Bingham, T., *The Rule of Law*, London, Allen Lane, 2010.