

A Lie More Disastrous than the Truth: Asylum and the identification of trafficked women in the UK

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Abstract

This article explores the impact that nationality can have on a person's experience of being identified as a victim of trafficking in the UK. Responses to individuals and disparities in rates of recognition depending on nationality are cause for great concern. The rhetoric and the response to women who have experienced trafficking varies considerably depending upon the citizenship, residency and documentation status of the individual, particularly highlighting the differential treatment of trafficking cases of British women, European Union nationals, and third-country (non UK, non EU) nationals, the majority of whom are also asylum seekers. This differential treatment is played out in multiple ways, many of which result in women's inability to realise procedural and substantive rights. The article examines the use of official "identification" mechanisms that place women into the administrative category of "victim", and the central role of the asylum system in all areas of UK anti-trafficking responses.

Key words: trafficking, asylum, re-victimisation, women's rights, discrimination

This above all, to refuse to be a victim. Unless I can do that I can do nothing. I have to recant, give up the old belief that I am powerless...A lie which was always more disastrous than the truth would have been. The word games, the winning and losing games are finished; at the moment there are no others but they will have to be invented, withdrawing is no longer possible.

– Margaret Atwood, *Surfacing*¹

The response to human trafficking into and within the United Kingdom is a complicated and yet incomplete combination of strategies, interventions and rhetoric, focused predominantly on immigration control and crime reduction, with support to individuals and prevention of exploitation as convenient outputs but not drivers of policy or practice. The introduction of human rights-based approaches has only emerged over the last decade, with discussions about the rights and entitlements of the trafficked beginning in earnest only in the last two years. Within the overall UK approach to human trafficking lies a stratified and often discriminatory system, largely reliant on rhetoric and practice taken from responses to immigration. For example, the understanding of trafficking, the identification of victims² and their treatment varies greatly depending on the immigration, documentation and residency status of the person involved. This is particularly so for individuals with the dual identity of trafficked person and asylum seeker. The fact that the UK Border Agency (UKBA) “asylum case owners”—the persons who review individual cases and make decisions on behalf of the Secretary of State—also hold the sole responsibility for determining the victim status of the majority of applicants means that many of the concerns highlighted in the agency’s response to asylum claimants also arise in relation to victim status determinations.

¹ Margaret Atwood, *Surfacing*, Virago Press, London, 1976.

² For the purposes of this article, a “victim of trafficking” will refer only to those persons who have been formally recognised as such by the government of the United Kingdom and placed in that administrative category. All other trafficked persons in the UK, regardless of their position with regard to the government will be referred to as trafficked persons, trafficked people or persons who have been trafficked.

Asylum Responses and the “Culture of Disbelief”

Concerns about the treatment of women in the asylum system have been raised by several organisations and legal representatives, and has most recently been confirmed by the UKBA itself following an internal audit.³ In January 2011, the NGO Asylum Aid published *Unsustainable*, the first piece of substantial research into women’s experience of the asylum system. The report concluded that: ‘[W]omen were too often refused asylum on grounds that were arbitrary, subjective, and demonstrated limited awareness of the UK’s legal obligations under the Refugee Convention.’⁴ Many of the UKBA’s decisions proved to be ‘simply unsustainable’,⁵ and 50% were overturned when subjected to independent scrutiny in the immigration tribunal. When Asylum Aid informed UKBA of the findings, the agency confirmed internal data also shows that a disproportionately high percentage of women refused asylum are granted some form of leave at appeal. According to Asylum Aid, however, ‘the UKBA has stressed that these are provisional figures, but has also agreed to analyse this data further and has put in place an internal working group to explore implementation of the report’s recommendations’.⁶

Concerns about deeply entrenched disbelief of asylum applications have also been raised by another prominent NGO, the Refugee Council, in response to the UKBA leaving asylum seekers in limbo for several years.⁷ In 2010, an internal UKBA whistleblower made public the practices of the Cardiff office.⁸ Louise Perrett, who worked as a case owner in 2009, asserted that staff kept a stuffed gorilla, a “grant monkey”,

³ Independent Chief Inspector of the UK Border Agency, *Asylum: Getting the balance right? A thematic inspection: July–November 2009*, OClUKBA, London, 2010, p. 19.

⁴ Asylum Aid, *Unsustainable: The quality of initial decision-making in women’s asylum claims*, Asylum Aid, London, 2011, p. 5, retrieved 31 November 2011, <http://www.asylumaid.org.uk/data/files/unsustainableweb.pdf>.

⁵ *Ibid.*, p. 54.

⁶ *Ibid.*, p. 5.

⁷ Jonathan Ellis, Refugee Council Director of Advocacy stated in a press release: ‘It is imperative that asylum seekers have adequate support and early access to good quality legal advice to pursue their case, but the culture of disbelief among UKBA caseworkers must also be eliminated.’ Press release, Refugee Council response to report on work of UKBA and asylum seekers left in limbo, 11 January 2011.

⁸ BBC News, ‘Whistleblower’s claims about Cardiff asylum office’, 3 February 2010, retrieved 28 November 2011, http://news.bbc.co.uk/1/hi/wales/south_east/8496759.stm.

which was used to humiliate officers who approved asylum applications. Following an internal UKBA investigation, the “grant monkey” was confirmed to exist, though determined by the agency to be “benign”. Following this exposure, the UKBA committed to improvements such as an overhaul of the Agency’s approach to credibility issues, starting with new training interventions and an increase from 20% to 50% of decisions made in Cardiff being assessed against an external quality assurance matrix.⁹ Finally, the Independent Asylum Commission (IAC) has reported consistently that such a “culture of disbelief” or “culture of refusal” is perceived by observers and applicants alike as prevalent in the Home Office decision-making environment, and possibly even encouraged by legislation such as Section 8 of the 2004 *Asylum and Immigration (Treatment of Claimants) Act*, which gives case owners a long list of factors which must be seen as damaging credibility.¹⁰ The Independent Race Monitor has also noted that negative public discourse on immigration and asylum can impact decision makers by encouraging caution and suspicion¹¹ and has, in the past, noted a high appeal success rate for applicants originating from African countries.¹² This environment presents particular challenges and concerns for a system designed to identify victims of trafficking, especially those who also claim asylum.

Unfortunately to date, there has not been any comprehensive evaluation of the impact that victim identification in an immigration context has on the overall process or the claimants themselves. Therefore, this article analyses the experiences of victims of trafficking supported by

⁹ UKBA, *Louise Perrett Investigation Report Summary*, Home Office, London, 2011, retrieved 2 December 2011, <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/investigation-louise-perrett/investigation-report.pdf>. Note that the full report has not been made publicly available.

¹⁰ *Immigration and Asylum (Treatment of Claimants) Act 2004*, section 8: ‘In determining whether to believe a statement made by or on behalf of a person who makes an asylum claim or a human rights claim, a deciding authority shall take account, as damaging the claimant’s credibility, of any behaviour to which this section applies. (2) This section applies to any behaviour by the claimant that the deciding authority thinks – (a) is designed or likely to conceal information, (b) is designed or likely to mislead, or (c) is designed or likely to obstruct or delay the handling or resolution of the claim or the taking of a decision in relation to the claimant.’

¹¹ M Coussey, *Annual Report 2005/6 of the Independent Race Monitor*, 2006, <http://www.ind.homeoffice.gov.uk/6353/aboutus/fourthreportofindependentra1.pdf>.

¹² *Ibid.*, p.16.

the Poppy Project,¹³ drawing on other empirical data including the publicly available national figures for identification of victims of trafficking.

UK Trafficking Responses in Context

Trafficking is, inter alia, an immigration crime.
—Damien Green, Minister of State (Immigration), Government of the United Kingdom¹⁴

The above quote from the UK Minister responsible for immigration, a portfolio that includes trafficking in human beings, is reflective of the tendency of UK policy and practice to reduce a complex human rights violation to a simple immigration problem. When the UK signed the United Nations Trafficking Protocol in December 2000 (though it would not be ratified until 2006), there were no substantial legislative or policy responses to trafficking in persons. The first identified UK priority was updating the criminal and immigration legislation accordingly, an approach that would set the tone for UK priorities with regard to trafficking for the foreseeable future.

The UK legislative framework

In 2003, the *Sexual Offences Act* introduced the crime of trafficking into (within, or out of) the UK for sexual exploitation,¹⁵ a clumsily-worded offence that requires that a person be moved into, within or out of the UK for the purposes of exploitation *and* that the exploitation consists, at a minimum, of the commission of another relevant sexual

¹³ The Poppy Project was funded by the UK Home Office until 2011. Since July 2011, it has been funded independently. The Poppy Project delivers support and/or accommodation to female victims of trafficking. It has, as of this writing, received over 2000 referrals and supported more than 750 women. Access to the project is dependent on a woman meeting certain criteria based on the international definition of trafficking. In accordance with the CoE Convention, women accessing Poppy Project services are not required to cooperate with authorities as a condition of receiving support and accommodation, but are supported to do so if and when they choose.

¹⁴ Quote from an address to the UK anti-trafficking organisations, 8 September 2011.

¹⁵ *Sexual Offences Act 2003, sections 57–59*, HMSO, London.

offence listed in the Act, such as rape, sexual assault or exploitation in prostitution. In 2004, the *Asylum and Immigration (Treatment of Claimants) Act* introduced a new offence of trafficking people for exploitation,¹⁶ which creates an offence only if someone has been moved into, within or out of the UK, for the intention of exploitation as defined in Article 4 of the European Convention of Human Rights, and if it can be demonstrated that the person was subject to force, fraud or deception.

No official process existed, however, to formally establish whether or not someone was a victim of trafficking. Identification was left to specialist non-governmental organisations (NGOs) such as the Poppy Project or to judges in either the immigration appeals or criminal justice system who often commented in their judgments on whether or not they believed that a witness or claimant was genuinely a victim of trafficking.

Formalising Identification, Codifying Discrimination

For many trafficked people, the experience of going through the immigration and criminal justice systems has horrific consequences. Those who enter the UK illegally must regularise their stay via the immigration system to access any assistance. Many are advised to seek asylum on the basis of their experiences, and until 2009 those who accessed government-funded support via NGOs were only offered support contingent on their willingness to cooperate with law enforcement. In 2008, after mounting pressure from the NGOs to recognise the limitations in such a system, the UK ratified the *Council of Europe Convention on Action against Trafficking in Human Beings* (CoE Convention), a key piece of international legislation that creates important and specific obligations on the state, particularly with regard to victim protection. The Convention came into force on 1 April 2009.

It clearly identifies the importance of a rights-based approach and the need to guarantee gender equality.¹⁷ To assist all states parties with

¹⁶ *Immigration and Asylum (Treatment of Claimants) Act 2004*, section 4, HMSO, London.

¹⁷ Council of Europe, *Council of Europe Convention on Action Against Trafficking in Human Beings*, CETS 197, Article 1, 16 May 2005, retrieved 26 August 2011, <http://www.unhcr.org/refworld/docid/43fded544.html>.

its implementation, the Organisation for Security and Cooperation in Europe (OSCE) developed the concept of a centralised National Referral Mechanism (NRM), a tool that was intended to ensure states could be compliant with the identification and victim care obligations in the Convention.¹⁸ Whilst the NRM is not a CoE Convention requirement, it is generally agreed to be a useful tool to help states meet their obligations.

According to the OSCE, the basic function of the NRM is to allow designated “first responders” or persons likely to encounter a potential victim of trafficking, such as the police, immigration officials, specialist NGOs, and social services to make a detailed referral, listing the indicators of trafficking to a “competent authority” who then makes an initial assessment as to whether it is reasonable to believe that this person may be a victim. In the UK, this decision is known as the “reasonable grounds” decision. It grants the individual protection from removal for a minimum of 45 days as well as access to support arrangements, as detailed by Article 12 of the Convention which sets out victims’ rights to material and psychological assistance.¹⁹ During the 45-day “recovery and reflection period”, the competent authority is required to undertake a comprehensive assessment of the individual’s claim, in conjunction with other involved professionals, which will allow them to reach a “conclusive grounds decision”, determining finally if a person is a victim of trafficking, and whether or not, owing to their circumstances, they should be permitted to remain in the UK temporarily. The explanatory report of the Convention explains the envisaged role of these important decision makers:

*Victims frequently have their passports or identity documents taken away from them or destroyed by the traffickers. In such cases they risk being treated primarily as illegal immigrants, prostitutes or illegal workers and being punished or returned to their countries without being given any help. To avoid that, Article 10(1) requires that Parties provide their competent authorities with persons who are **trained and qualified in preventing and combating trafficking in human beings and in identifying and helping victims, including children, and***

¹⁸ Office for Democratic Institutions and Human Rights, *National Referral Mechanisms: Joining efforts to protect the rights of trafficked persons*, Organisation for Security and Cooperation in Europe, Warsaw, 2004.

¹⁹ *Council of Europe Convention on Action Against Trafficking in Human Beings*, Article 12.

*that they ensure that those authorities cooperate with one another as well as with relevant support organisations....It is essential that these have people capable of identifying victims and channelling them towards the organisations and services who can assist them...*²⁰

Decision-making authority within the UK's NRM is vested in two competent authorities, divided according to immigration status. For those who are UK or European nationals, decisions are made by the UK Human Trafficking Centre (UKHTC), which is part of the Serious Organised Crime Agency. Not only are these claims not contributing to UK immigration statistics, but it is important to note that positively identifying European nationals often does not create a financial obligation that otherwise would not exist. As nationals of EU states, many of these individuals would be entitled to material assistance such as housing and income support regardless of their status as a victim of trafficking. They could not be removed from the territory if they are found not to be victims.

Non-EU nationals, regardless of their documentation status, have their claim evaluated by the UK Border Agency. Critically, individuals who are both asylum seekers and claiming to be trafficked will have both decisions made by the same immigration official. According to the guidance published for both asylum case owners who encounter victims of trafficking and competent authorities who will make NRM and/or asylum decisions, the two systems are intended to run in parallel.²¹ Concerns have been raised about how the asylum system should respond to a person in the 45-day recovery and reflection period. Support providers advocate waiting for the end of the period before a person goes through a complicated and re-traumatising interview, but in reality many people claiming both trafficking and asylum are given no time to recover and will be interviewed before any decision is made. Not only does this confuse and conflate the two processes in the mind of the individual and the decision maker, but it means that individuals who should be able to use their proof of reasonable grounds status to assist them in accessing rights and entitlements are unable to do so for months or even years at a time.²² Many NRM and asylum decisions

²⁰ *Ibid.*, Explanatory report at paragraphs 128–130. Emphasis added.

²¹ UK Border Agency, *Guidance for the Competent Authorities*, UKBA, London, 2010, p. 31.

²² Poppy Project, Report to the UK Ministry of Justice (Personal communication by e-mail, 8 April 2011).

made simultaneously use the exact same text and often NRM decisions will include sections such as “risk on return”, a critical element of asylum decision making that is not at all essential in determining trafficking. Asylum claims are based on an individual’s well-founded fear of persecution in their home country: the risk they face upon return. A person may have been trafficked out of circumstances that do not meet the threshold for asylum, but still be in need of immediate assistance to recover from abuses experienced in the UK. The absence of refugee status cannot legally exclude them from accessing that support. Use of language related to risk on return encourages use of the wrong kind of information to make a trafficking decision, especially when that information suggests that a person should not remain in the UK.

There is no appeal process for any NRM decision; the only way to legally challenge a decision is via judicial review at the High Court. Judicial review is an arduous and complex process and, given a lack of understanding of the NRM amongst the judiciary, it is rare that applications to the High Court are even accepted let alone successful. If judicial review fails, the only recourse is to the European Court of Human Rights.

The tables below show the official NRM statistics as collected and published by the UK Human Trafficking Centre in March 2011.²³ Table 1 shows the breakdown in NRM decisions of EU (**but not UK**) nationals from 1 April 2009 to 31 March 2011. EU nationals were assessed as presenting “reasonable grounds” of having been trafficked at the initial stage in 93.8% of cases; 85.5% were conclusively determined to be victims of trafficking. For UK nationals, the numbers are even higher, with 96.1% (of 52 cases) assessed as presenting “reasonable grounds” of having been trafficked at the initial stage and 91.8% conclusively determined to be victims of trafficking.

All NRM statistical data, whether or not it involves an immigration/ asylum component, is collected and analysed by the UKHTC. Only information regarding nationality, age, exploitation type and gender of those entering the NRM is published, as well as the outcome of

²³ UKHTC, *National Referral Mechanism Data*, SOCA, London, 2011, retrieved 13 April 2011, <http://www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism/statistics>.

TABLE 1

**Reasonable and conclusive grounds decisions made for
EU national cases from 1 April 2009 to 31 March 2011**

Nationality	Referrals as at 31/03/11	Reasonable Grounds Decisions					Conclusive Grounds Decisions				
		Not considered	With- drawn	Negative RG	Positive RG	% Positive RG	Not Considered	With- drawn	Negative CG	Positive CG	% Positive CG
Belgium (disputed)	1			1		0.00					0.00
Bulgaria	7			1	6	85.71				6	100.00
Czech Republic	68		9	2	57	96.61	3		3	51	89.47
Estonia	2			1	1	50.00				1	100.00
Hungary	23		1		22	100.00	2			20	90.91
Latvia	7		1		6	100.00				6	100.00
Lithuania	24		1	2	21	91.30			6	15	71.43
Poland	19		9		10	100.00	1		1	8	80.00
Slovakia	59		3	4	52	92.86	3		8	41	78.85
Romania	77	1	6	4	66	92.96	2		5	59	89.39
Spain	1				1	100.00			1		0.00

claims. It is impossible to know exactly what percentage of non-EU nationals also claim asylum, but data collected by the Poppy Project provides some insight.²⁴ From 1 April 2009 to 31 March 2011, 418 non-EU women with credible accounts of trafficking were referred to the Poppy Project. Of these women, 181 were able to provide information about their immigration status (all women are asked, but many are unsure about their own status at point of referral). Out of the 181 women, 168 were either claiming asylum or had been refused. An additional seven women had not claimed asylum but expressed an intention to do so. Therefore, of the 181 cases, 175 women, or 96.6% were also in the asylum system. The overwhelming majority of those claims are still outstanding, but longer-term data collected by the Poppy Project suggests a refusal rate at initial decision of 75–80%. Of these, however, 89% are overturned at appeal and some form of leave to remain is granted.²⁵

²⁴ This estimate is based on an analysis of information held on Poppy Project service users referred between 1 April 2009 and 31 March 2011. All data held by Poppy Project, London.

²⁵ *Ibid.*, Based on data collected between March 2003 and August 2011, a total of 792 cases.

TABLE 2

Reasonable and conclusive grounds decisions made for non-EU nationals from 1 April 2009 to 31 March 2011

Region of Origin	Referrals as at 31/03/11	Reasonable Grounds Decision					Conclusive Grounds Decision				
		No Decision	With-drawn	Negative RG Decision	Positive RG Decision	% Positive RG	No Decision	With-drawn	Negative CG Decision	Positive CG Decision	% Positive CG
Asia	369	27	11	126	208	62.84	69	3	73	63	30.29
Africa	613	46	10	266	291	47.47	67	2	88	134	46.05
Europe (Non EU)	56	4	2	16	34	60.71	9	1	7	17	50
Americas (& Caribbean)	13	0	0	5	8	61.54	1	0	2	5	62.5
Indian Sub-Continent*	90	4	0	20	66	73.33	23	0	16	27	40.91

*India, Pakistan, Bangladesh

Table 2 shows the outcomes of NRM decisions for non-EU nationals, many of whom will receive asylum refusals based on the same decision-making process.

The tables confirm that positive decisions for non-EU nationals are significantly lower than that of EU and UK nationals. The average positive reasonable grounds decision rate for UK and EU nationals is 89.4%, compared to 61% for non-EU nationals. In relation to final determinations of trafficking status, the comparison is even starker with an average of 82.8% of UK and EU nationals conclusively accepted to be victims while the average for non-EU nationals is only 45.9%.

The following sets out UK Home Office statistics on asylum claims for the same regions as of end 2010.²⁶ Average rates of initial identification are approximately 22.6%, but importantly when those individuals who were not granted at initial decision lodged an appeal, an average of 24.6% of those claims were also found to be credible. As mentioned above, it is the same case owners who make decisions in both types of claim, a decision that has been found to be incorrect or legally

²⁶ Home Office, Monthly asylum application tables, December 2010. Table of number of applications received for asylum in the United Kingdom and a table of pending applications received for asylum since April 2006. Available at: <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/asylum-app-dec-2010?view=Standard&pubID=866000>.

TABLE 3

Region of Origin	Applications in 2010	2010 Asylum Outcomes*								
		Granted Asylum	Granted HP	Granted DL	Refused	% Granted Initially	Appeal Lodged	Appeal Allowed	Appeal Dismissed	% Granted at appeal
Asia (Including Indian SC)	7272	637	18	835	6262	20.1%	3858	776	2753	20.1%
Africa	6601	1915	40	491	5132	37.1%	3009	897	1829	29.8%
Europe (Non EU)	650	77	4	46	550	19.5%	270	62	172	23%
Americas (& Caribbean)	427	28	4	27	357	13.8%	125	32	71	25.6%

*Published by the Home Office in September 2011

indefensible in a significant percentage of appeals. This may indicate that if an appeals mechanism were in place for the NRM, we may see greater rates of overall recognition for victims of trafficking.

Experiences and Outcomes of Trafficked Persons Claiming Asylum

No comprehensive evaluation of the asylum outcomes of trafficked people is possible, as government records are not kept in a way that would permit the necessary data analysis. This means that the only way that such evaluations can be done is by groups or legal representatives working with individuals navigating both systems.

However, this is much more than a statistical problem. The Poppy Project has collected several examples of cases where violence against women in the context of trafficking-related exploitation has been dealt with inappropriately in both systems. For example, in the case of Ms B, an Indian woman exploited in forced labour and who also experienced sexual violence at the hands of her exploiter, the NRM decision stated:

It is noted that you have highlighted numerous incidents of non-consensual sex [...] and some instances of violence. [...] Although this experiences [sic] are extremely unpleasant it is considered that this treatment [...] does not amount to trafficking in your case.²⁷

In Ms B's case, her claim of trafficking was based on a situation of forced domestic labour. Her experience of rape was reflective of a type of abuse experienced in that situation. Victims of trafficking report experiencing physical and sexual violence in addition to their exploitation in forced labour.²⁸ NRM's comment on her experience of sexual violence is offensive. Referring to rape as 'unpleasant' is entirely inappropriate. Even if it was felt that experiencing rape was not an indicator of trafficking, it is still a human rights violation that should be responded to with respect and consideration.

In this case, the initial asylum refusal was overruled at appeal where the judge accepted claims of trafficking and rape, thereby rendering the NRM refusal meaningless.

Ms C, an Albanian national, received a decision that stated she could not be believed because she was 'significantly aware of the pricing structure'²⁹ in the brothels where she was exploited.

Official UK Border Agency guidance on assessing whether someone is a victim of trafficking states:

Victims of trafficking may be reluctant to go into much detail about the full facts of their case...interviewing officers should phrase their questions carefully and sympathetically, but should keep in mind the need to get as full an account as they can, while at the same time taking care not to cause undue distress....The first task is to assess the material facts of the asylum claim, giving appropriate weight to all the evidence, oral or documentary.³⁰

It would seem that having regard for the trauma someone has experienced comes second to assessing the material facts of their claim. Similarly, competent authorities are told that victims may be

²⁷ UK Border Agency, NRM Reasonable Grounds Decision (Personal communication by fax, 15 May 2009).

²⁸ A Stepnitz, *Of Human Bondage: Trafficking in women and contemporary slavery in the UK*, Poppy Project, London, 2009, p. 27.

²⁹ UK Border Agency, NRM Reasonable Grounds Decision (Personal communication by letter, 22 September 2010).

³⁰ UK Border Agency, *Victims of Trafficking: Guidance for frontline staff*, UKBA, London, 2010, p. 23.

unable or unwilling to go into excessive detail about their experiences of exploitation, yet then makes unhelpful assumptions when determining credibility, such as in the example below:

Your description of how you escaped the brothel is contradictory and vague in your asylum interview. You do not remember where the house was located, you do not know the name of the man who helped you to escape, you do not remember the name of the train station you went to after escaping. Whilst it is noted that you were relatively new in this country when these events unfolded, it is considered that you would have some memory of such basic details given the significance of these events and their impact upon you....You explained this by saying you were “stressed and not thinking.” You (sic) explanation is not accepted....Consequently your evidence about the alleged escape from your abductors is not accepted.³¹

Conclusion and Recommendations

It is clear that women who have been trafficked and are claiming asylum in the UK are experiencing significant difficulty being identified correctly and therefore accessing their rights and entitlements. These identification problems mean that many women cannot access housing, medical care, education and safety. Consistently high refusal rates of persons from certain groups reinforce stereotypes about regions and countries of origin, which impact on decision making and likelihood of a police investigation or prosecution. All these, in turn, have an impact on prevention work. The UK cannot possibly effectively prevent trafficking or assess threats based on a biased and unrealistic information base. Both the asylum and NRM systems are designed to provide necessary protection to people who have experienced, or are at risk of, serious human rights violations. As noted above, widespread concerns about the ability of the asylum system to properly determine credibility are very relevant to the NRM as well. Unless significant work is done to improve the identification mechanism, educate decision makers effectively, extract trafficking from the asylum system and

³¹ UK Border Agency, NRM Reconsideration (Personal communication by e-mail, 15 February 2011).

focus on the rights of individuals over immigration outcomes, the UK will continue to use systems that are not ideal, sending a message to perpetrators, trafficked people and the global community that the UK does not take trafficking seriously.

Recommendations for Government Action:

Trafficking

1. Review the National Referral Mechanism and separate it from the asylum system to ensure that the NRM:
 - a. is genuinely multi-agency, placing identification and support, not immigration status, at the centre of decision making
 - b. carries a right of appeal to an independent body, comprised of multi-agency staff
 - c. ensures that asylum decisions are not made by the same individuals who make NRM decisions
2. UKHTC, UK Border Agency, in collaboration with support professionals, to publish guidance and provide training for first responders and decision makers that effectively and accurately reflect the CoE Convention definition of trafficking and instruct those working with trafficked people on appropriate application thereof.
3. UKHTC and the UK Border Agency to publish quarterly statistics that actively seek to understand any overlap occurring between the asylum and NRM systems.
4. Ensure that “dip sampling” of decisions examines linked decisions and that changes in one decision (i.e. overturning of a negative NRM decision) is reflected in any related asylum decision.
5. Appoint an independent anti-trafficking rapporteur to oversee identification, decision making, collaborative working and data collection. The rapporteur should possess statutory powers to request information from law enforcement, UKBA, social services, be required to work collaboratively with NGOs, and be accountable to Parliament.

Asylum

1. UK Border Agency to fulfil all obligations with regard to non-discrimination and equality to ensure that all individuals are able to benefit equally from the public services they provide.
2. Ensure that female asylum applicants are provided with the option of a female case owner, who will carry the case from beginning to end whenever possible, and that female interpreters are available at interviews.
3. Ensure that case owners making decisions on asylum claims in which trafficking issues have been raised:
 - a. Understand the application of the Refugee Convention, international and regional human rights law, the CoE Convention on Action Against Trafficking in Human Beings and other relevant documents
 - b. have a thorough understanding of relevant domestic policy and legislation and have access to specialist advisors
 - c. treat applicants with respect and dignity, conducting interviews with an appropriate regard for the trauma experienced
 - d. are able to identify signs of vulnerability and trauma and respond accordingly
 - e. do not base decisions solely on assumptions, speculation about an individual's experience, or alternative theories that have no basis in fact
 - f. work with all involved professionals regarding trafficking issues, including seeking input from law enforcement or prosecution where relevant.

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