



HOUSES OF PARLIAMENT

Joint Committee on Draft Modern Slavery Bill

Oral evidence: [Draft Modern Slavery Bill](#), HC [1019], Tuesday
11 March 2014

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Members present: Mr Frank Field (Chairman), Baroness Butler-Sloss, The Lord Bishop of Derby, Baroness Doocey, Baroness Hanham, Baroness Kennedy of Cradley, Lord McColl of Dulwich, Lord Warner, Fiona Bruce, Fiona Mactaggart, Mrs Caroline Spelman and Sir Andrew Stunell

Questions [1222 - 1311]

Witnesses: **Caroline Young**, Deputy Director, National Crime Agency Organised Crime Command, **Liam Vernon**, Head of the UK Human Trafficking Centre, National Crime Agency Organised Crime Command, **Sarah Rapson**, Director General, UK Visas and Immigration, and **Glyn Williams**, Director of Asylum, UK Visas and Immigration, examined.

Q1222 Chairman: Welcome. Before I ask you to introduce yourselves for the sake of the record, Fiona Bruce would like to declare an interest.

Fiona Bruce: I would like to declare an interest as the senior partner of a law firm with a legal aid contract.

Chairman: Thank you. Liam, would you begin by identifying yourself please and then we will go down the line?

Liam Vernon: I am Liam Vernon from the National Crime Agency. I am the Head of the UK Human Trafficking Centre.

Caroline Young: I am Caroline Young, Deputy Director, Organised Crime Command of the National Crime Agency, under which the UKHTC sits.

Sarah Rapson: I am Sarah Rapson, Director General for UK Visas and Immigration in the Home Office.

Glyn Williams: I am Glyn Williams, Director of Asylum in UK Visas and Immigration in the Home Office.

Q1223 Baroness Butler-Sloss: Glyn, if I may so call you, we have had a lot of evidence of concern across, I think, all NGOs about the two-sided position of what was UKBA, now UK Visas and Immigration, that you are responsible for deciding whether people can stay in the country, and that the same people are responsible for deciding whether somebody has actually been trafficked. You make the final decision on that. It doesn't look good. What do you say about that?

Glyn Williams: Clearly, there are two separate legal processes. There is the asylum process under the Geneva convention and then the trafficking process under the trafficking convention. We understand that these need to be kept separate. They are separate legal processes with separate timetables and different burdens of proof, things like that. We have trained our caseworkers to keep the distinct processes very much in mind as they handle these cases.

Q1224 Chairman: Does your job title reflect that?

Glyn Williams: No, it does not. It is true that I am Director of Asylum. I do not have human trafficking or modern slavery in my job title.

Q1225 Baroness Butler-Sloss: You say that your staff take asylum and NRM decisions separately and understand the different processes, but you have a surprisingly low number of people whom you allow through as victims of trafficking. You only have to compare what Liam's group does in the UKHTC, which has an 80% rate—what victims might see as a success rate—and you only find 20%. There is at least the suspicion that, because the same officials who are dealing with asylum are dealing with trafficking, they will in fact see themselves as much more concerned with stopping people staying in this country than looking to see if those people are really victims of trafficking. Twenty per cent is exceptionally low, isn't it, if you compare it with the UKHTC?

Glyn Williams: One thing we have to bear in mind here, Madam, is that we are dealing with non-EEA nationals whereas the UKHTC is dealing with EEA nationals. Potentially, there are some differences in the circumstances of the cases. As a generality, we think that the EEA ones tend to come off the back, as it were, of a police investigation. Very often they are people who have been caught—sorry, not caught, but found in a trafficking situation, with the traffickers possibly to hand and the police involved. It is very immediate and their evidence can be corroborated by the police.

Quite often with our non-EEA cases, it is a more remote situation and the police have not been directly involved, so it can be more difficult for us to corroborate. There was some work done on this by the so-called NRM oversight group in 2011. They sampled cases from the UKHTC and those that UKBA, at the time, had looked at. They found, for example, that, where a police investigation was common to both, similar decisions were taken in each case. There is an element here that we are not always comparing the same sorts of case.

Q1226 Chairman: Are you saying that Liam's figures are too high?

Glyn Williams: Am I saying that?

Chairman: Yes.

Glyn Williams: No, I am not saying that at all. Not at all. Obviously we have said that we will do a review. I am not trying to dismiss the question you have posed or take too polemic an approach. I recognise there is a gap in the types of decision that we take, and that does need to be explained or justified if we can. In the review we have coming up, this will be a key area for the reviewer.

Q1227 Baroness Butler-Sloss: It is suggested that there is a culture of disbelief among your staff towards potential victims of trafficking. You have now been in post since April. Have you experienced that? Do you think that is a fair comment about the way that your staff are dealing with these people? This 20% does have a huge question mark over it, doesn't it?

Sarah Rapson: You have directed your question to Glyn, but may I make a comment?

Baroness Butler-Sloss: I direct it still to Glyn, but I am happy if you want to answer it.

Sarah Rapson: If I may, I will chip in on the point about culture. You will recall that a year ago the Home Secretary took the decision to break up the UK Border Agency and to split it into two—the UK Visas and Immigration function, which I lead, and the Immigration Enforcement Organisation, which Mandy Campbell now leads—to enable us to create two quite distinct cultures. Immigration enforcement is about removing people from the country who should not be here. UK Visas and Immigration, while grounded in national security, is much more customer focused; in this context, let us call it a vulnerable people or victim focus. It enables us to focus on that in a way that the previous organisation had not been able to do. That is the kind of vision

we have set out for the organisation and the kind of culture we want to see in the organisation.

Mr Williams and I took a trip to see the NRM team in Leeds on Friday. They are absolutely passionate about the work that they do. They want to understand first whether somebody is a victim or not, and connect them to the right support mechanisms before they even start to think about what the immigration status of that individual is. As Glyn said, I am not saying there is not more work that we need to do, but I think a lot of care is taken when we look at some of these cases.

Q1228 Mrs Spelman: We met victims of trafficking yesterday. Absolutely consistently, every single victim said that the fundamental problem was that they just were not listened to. That of course in our minds, as Bill Committee members, corroborates our concern that there is that culture of disbelief.

I want to ask you specifically about another really practical problem. Some of those trafficking victims had to wait up to eight months for a reasonable grounds decision, whereas in fact they were told that the position is that the decision should be taken within five working days. That takes them right out beyond the recovery period where those very vulnerable people do not have the support of the kind of victim services that they might reasonably expect in other countries like America. What do you say to that kind of delay?

Sarah Rapson: I think it is unacceptable. There have been delays in the processing of these cases in the organisation. We have made some quite significant changes to how we manage these cases over the past year. It would probably be helpful for the Committee to understand some of those changes, because we think they are having an impact.

All new cases are currently going to our centralised team in Leeds. All cases are having their reasonable grounds decision made within that five-day period. That has not historically been the case but it is absolutely the case now.

Chairman: Sarah, round one is over and you can have a rest. We have a Division; we'll be back in five minutes.

*Sitting suspended for a Division in the House.
On resuming—*

Q1229 Baroness Doocey: When we saw some victims of trafficking, the overriding impression we got was of really shabby treatment: not being believed, not being listened to—these were recurring themes—and eventually being housed with prostitutes. The whole thing was really poor. What procedures and training have you put in place for your staff, to ensure that they actually understand what they are

supposed to be doing? Have you arranged for them to meet some of the NGOs who specialise in these areas to give you a first-hand account of the problems and the issues that these people have to put up with?

Glyn Williams: Yes. As regards the non-EEA—we might want to talk about the EEA as well—in terms of staff training, we have a range of training courses. New caseworkers do a five-week course, which includes a component on human trafficking. Those who are going to be decision makers as competent authorities do a two-day specific classroom course. We have e-learning courses for all staff on trafficking, gender and the NRM. Partners come into the classroom-based courses and talk to our staff. Now that we have focused things at the hub, which is basically the asylum office in Leeds, we have a stronger focus. We have discussions with partners there, both the first responders and the UKHTC, as well as the police. We have strengthened those ties recently.

Q1230 Baroness Doocey: But if you have, and if you are so aware of what needs to be done and how important face-to-face training is rather than just internet-based training, why do we hear this all the time? In all the years I have worked in this area the one thing I hear time and time again from every victim is, “Nobody listens. They don’t understand. They don’t care.” What is missing when they don’t seem to have the ability or the need to understand what these victims are going through? Why do the victims all feel that nobody is listening to them?

Glyn Williams: I do not know; I am speculating. Possibly it is because it’s a situation where we are trying to ascertain whether they are victims of trafficking under the convention first and then if they deserve asylum according to the rules on asylum. It is a rules-based process to some extent. We are not performing a social services function—I am talking for my own organisation here.

Q1231 Chairman: May it not be different, Glyn, if you had a different composition of the group that decided that? We know that Liam’s group is different, because they are interdisciplinary. We also know that he is not a chucking-out organisation. Unfortunately, that is how many people will have to view your job. Do you not think that the decisions would be different if you had more people, other than this strong bias towards immigration, represented on the board that made the decisions? Maybe that is a separate question.

Sarah Rapson: I was just trying to think about where that might be coming from as it relates to the work that we are responsible for. I was just answering Mrs Spelman’s question on the amount of time it takes to get a reasonable grounds decision, and its being much longer than five days. I would imagine that, if it is taking much longer than five

days, you probably are feeling as though you are not being listened to. A practical thing in us taking too long to make some of those early decisions to get people connected to the support systems that are there for them to get connected to might well be part of it. The fact that we are now making those decisions in five days—

Q1232 Chairman: Is every decision now made in five days?

Sarah Rapson: In the first stage reasonable grounds decision, all of those cases are now going to Leeds and they are being made in five days. That is quite different from the experience before. Also, between 80% and 90% of those decisions are positive decisions. We are saying, "On the balance of what we can see, there is a likelihood that you have been trafficked so we are going to put you into the system to get access to the service that you need." It might be part of the reason. You asked why we think that might be the victims' experience. If we have taken too long to do that, it may well be part of it.

Q1233 Baroness Doocey: That certainly was not anything that was ever suggested to me. It was always on the basis of, "They don't believe what we're saying; they think we are lying." That was the key thing.

Sarah Rapson: In 80% to 90% of our decisions we are saying, "On balance, at first stage, we agree and we are going to plug you into the help that you need."

Q1234 Fiona Mactaggart: But what proportion is that 80% to 90%?

Sarah Rapson: I have a number and I will share the number with the Committee, but the data is not very good. I think the Committee has made that point before. We think that about half the decisions that we make at the second stage—the conclusive grounds stage—are positive. That is quite different from the numbers that we started the Committee with. You would then say, "But it is not the same as colleagues at the HTC." We would say that we need to compare apples with apples, and we do not think that we are. Does that make sense?

Q1235 Fiona Bruce: We are interested to know from each of you in turn, if it was your daughter in this situation, how you would want them to be treated throughout the process. That is a question we want to ask each of you.

Chairman: We have called it "the daughter test." Would you be ashamed of the treatment your daughter would be given if she appeared before your review?

Liam Vernon: Would I be ashamed? I would expect her to be treated with empathy, sympathy and respect. I feel that that is how we in the UKHTC do so using the NRM, if that is the question you are asking.

Q1236 Chairman: One of our problems is that Sarah has presented a Pauline conversion. All the people we are talking to appeared much earlier in the scheme, and feel that they were anything but passing the daughter test.

Liam Vernon: Certainly in terms of my experience of the people who deliver the front-line services to victims, they are nothing short of superb. No matter where you came from, when you were delivered to a competent authority as a potential victim, I have every confidence that the service that you get around your recovery and reflection would reflect that.

Sarah Rapson: We had the independent chief inspector come in to see some of our safeguarding children teams recently. In his report, he wrote that my staff look after those children in a way that they would want their children to be treated if they were on their own in a foreign country. Most of the staff who deal with those vulnerable people are highly empathetic. I do not think the system is perfect. We should look at how we are doing things, and we should get the NRM review to take this up and challenge us, because, if that is the feedback you are getting from victims, we must take it seriously. I would also say that very many of the people who are in public service are doing it because they care about the service they are providing.

Q1237 Fiona Mactaggart: I have certainly talked to victims who have been picked up in police raids with hardly any clothes on, because they were picked up in a brothel, for example, and who remain unclothed for weeks.

Chairman: We will come back to the NRM after we vote.

*Sitting suspended for a Division in the House.
On resuming—*

Q1238 Fiona Mactaggart: We have been talking about how the NRM works in practice. One of the bits of evidence that we have been collecting is about the accountability of the procedure. We have had evidence suggesting that if it was to be put on a statutory footing it would remove some of the arbitrariness that earlier questions have referred to. It could mean that there is an appeal process, and therefore that there is a simple form of accountability for you. Do you see any merits in that?

Liam Vernon: The merit in that is certainly something I would expect the NRM review to consider as to what are the benefits or non-benefits in doing that. One of the things I would raise is that in terms of its practical operation what is important is that, whether it is statutory or non-statutory, first responders understand what it is and what their existing obligations are. They are out there and we know what they are. Do local authorities refer all children into the NRM, which they are currently obliged to do? We know that they do not. Whether it becomes statutory or non-statutory, the real issue for me is how you get it properly on the agenda of all the first responders and the police service to ensure that it is utilised in the way that the convention designs it to be. That would be my perspective on it.

Caroline Young: I would agree entirely with Liam. It is something that the NRM review in its nature will look at. It is about making sure that people respond appropriately. I could not add anything to improve on what Liam said.

Q1239 Fiona Mactaggart: My worry about that review is that the only opportunity to make it statutory will be the Bill that we are currently discussing, and at present it looks like your review is going to happen after the Bill. Therefore, I am worried about the timing. If you think that putting it on a statutory basis might have some merit, this Bill is your only opportunity.

Chairman: Caroline, is there a rumour in the Home Office that you are about to begin this inquiry?

Caroline Young: We are not the Home Office.

Q1240 Chairman: No, but have you heard of any rumours?

Sarah Rapson: The terms of reference will be out shortly. You might want to raise your question with the Minister, whom I think you have in front of you tomorrow. That might be a question you want to raise with her.

Q1241 Fiona Mactaggart: But what do you think about appeal proceedings? Immigration decisions are appealed, so why shouldn't NRM decisions be?

Sarah Rapson: My focus is about making the existing system work better. In the period of time I have worked in this area, it has been quite clear to me that some things just have not been working well. We have not been progressing with making decisions sufficiently quickly because we have had a dispersed operational response. I think we will

continue to see some real improvements in the operation that we currently have, and making that work better is my priority.

Q1242 Chairman: Liam, you said that there were merits in making it statutory. What are the merits? Can you give us a quick little checklist?

Liam Vernon: If you make it statutory, perhaps there will be more awareness of the front-line agencies in terms of what it is. Again, the NRM review could probably address that.

Q1243 Chairman: Glyn, do you think there are downsides to making it statutory?

Glyn Williams: If it introduces—and I am not saying it would, because I have not really thought about it—less flexibility into the process. We have talked about why people feel that they have not been listened to, and if it makes it a more legalistic process and even less empathetic, that would be a downside.

On the appeals point, you were talking about an appeal against the trafficking decision. It is true that there isn't one; you can only go for judicial review. It is also true that 78% of trafficking claims are linked with an asylum claim, and there is appeal against an asylum decision.

Q1244 Chairman: Do you see a link there? If you are making an appeal that you have been enslaved and you link it with an asylum claim, at least you can have another go at it.

Glyn Williams: Yes, that is true. The point I was trying to make was that to see the full protection picture you should not just look at the trafficking decision. You also need to look at the asylum decision which usually, in the majority of cases, comes with it.

I can give the Committee some more statistics that we have dug out. This is over the last four or five years. Of all the positive conclusive grounds decisions, 85% also went on to get asylum. Of all the negative conclusive grounds decisions, 44% none the less got a positive asylum decision. Of all the negative reasonable grounds decisions, 23% still got an asylum decision. There are quite a few people who are not getting a positive trafficking decision who are still getting an asylum decision, which of course gives them five years' leave to remain in the UK.

Q1245 Fiona Mactaggart: But it is not just a positive decision or not. One of the interesting bits of evidence that we had from Anti-Slavery International was that the non-statutory NRM provides an inducement argument which defence counsel use in proceedings against exploiters, who claim that victims are co-operating only because it is the trigger to

giving them assistance. Therefore, defence counsel of a brothel runner, a meatpacker or whatever is saying that the victim is only doing this so that they can get 45 days' respite, support and so on. That has been used in arguments. If it was a statutory system, that would not be able to happen.

Sarah Rapson: From our perspective, this is something that we would expect the NRM review to look at. As part of that, the feedback from the Committee will be taken into consideration.

Q1246 Lord McColl of Dulwich: Sarah, what is a dispersed operational response, which you say is the problem, and how are you going to deal with it?

Sarah Rapson: Historically, or until January, a number of our different asylum teams across the UK were also making decisions on the human trafficking aspects of those cases. We think that led to a lack of consistency and prioritisation of the cases. We ran a pilot throughout 2013 to bring all of that work into one place—into our Leeds office that we have already talked about—with a very focused team there that does this work. That pilot has gone through quite a lot of the older cases—the backlog of cases—and, as I said earlier, has now been able to make the reasonable grounds decision within the five-day target. I think that is a much better way of prioritising this important work. We will carry on bringing all of the new cases into that team, as well as the residual older cases that are still with the more dispersed asylum teams. Does that make sense?

Lord McColl of Dulwich: It does.

Q1247 Lord Warner: In answering an earlier question, Glyn, you made the link between asylum cases and trafficking cases. Would it not be sensible, therefore, if the reasonable grounds test was the same in both cases? It is not at the moment. Is there a case for saying, and would you support it, that the test for decisions by the NRM should move to "a reasonable degree of likelihood" as it is in asylum cases, so that there would be a change in those grounds?

Glyn Williams: The reasonable grounds decision is, "I think this is true but I can't prove it." That is quite a low standard of proof. A conclusive grounds decision is, "I think on the balance of probabilities," whereas the asylum decision is on "reasonable likelihood," which is a slightly different burden of proof. It is really a question for lawyers. Your question was whether it would make a difference if the conclusive grounds decision in trafficking was also reasonable likelihood rather than balance of probabilities. The honest answer to that is I do not know. We would have to ask the lawyers. The lawyers would have to go

and look at a sample of cases, compare the two and see whether we would have ended up with a different decision.

Going back to my earlier point, the fact that the asylum decision is a slightly lower standard of proof—"reasonable likelihood"—works, on the face of it, in favour of the claimant. A lot of them, as I said earlier, are getting protection through asylum, and they are getting five years' leave to remain in the UK, which normally becomes permanent leave. It is obviously far more than they can get even if they get a positive conclusive grounds decision under the trafficking convention.

Q1248 Lord Warner: But isn't there a chance that the lower threshold will get some of those victims into a set of services and support arrangements rather faster? That is part of the argument for changing.

Glyn Williams: I suppose that would be true if one could demonstrate what would be the practical impact of changing that burden of proof. These are quite fine legal concepts, and we would have to look at how caseworkers would apply them in practice and what difference that would make.

Q1249 Lord Warner: Let me turn this round the other way. What is the case for having two separate tests? Is it historical accident?

Glyn Williams: I am not sure. I think it is just how it has come out under both the international and British case law. I do not want to get too dug in on this. You have raised a fair question. I am just speculating as to the answer. It is not something we would feel tremendously strongly about.

Q1250 Lord Warner: No passion in the Home Office on this.

Glyn Williams: Dispassion.

Q1251 Baroness Kennedy of Cradley: I have two follow-up questions for Glyn and Sarah. Before the first Division, you mentioned a lack of police investigation. Do your visa, immigration and asylum staff actively seek out the co-operation of the police, especially before you make the conclusive decisions, so that those decisions are made in co-operation with the police? Secondly, probably more for Sarah, you obviously have figures for meeting the five-day target—I think you said 80%—but what is your target for the length of time that should be taken between the reasonable grounds decision and the conclusive decision? Are you meeting that target? What are the figures and what is the current average length of time? Clearly, you are waving them through, but then obviously the time lag may well be between that first and second decision.

Glyn Williams: On the first point, yes, we do where that is appropriate. One of the things about a trafficking decision compared with an asylum decision is that, if the trafficking offence has taken place in the UK, it is more capable of independent verification, much more so than an asylum decision, where we are talking about persecution that has taken place in Afghanistan or some foreign country. We cannot usually verify that independently and we have to go simply on the word and the credibility of the claimant, which is why we get into the culture of disbelief argument so often, whereas we can attempt to verify the trafficking decision through the police and other sources. It is a slightly more objective decision, so, yes, we attempt to do that wherever we can.

Q1252 Baroness Kennedy of Cradley: Is that evidence taken into account in the final conclusive decision?

Glyn Williams: Absolutely.

Sarah Rapson: This is a good question, because, while the target for the conclusive grounds decision is 45 days, we are not meeting that at the moment. There are a number of reasons for that. We are prioritising the meeting of the five-day target over the 45-day target. In a world where we are not doing everything, that feels right to me, because the sooner you can get somebody identified as a victim and plugged into the support, the better. It must be right to prioritise that if you have to make a trade-off. I am not satisfied with the performance on the conclusive grounds decision, but during that period people can still have access to housing, support, counselling and everything else that is part of that package. We have more work to do in UK Visas and Immigration to get within target for the conclusive grounds decisions.

Q1253 Baroness Kennedy of Cradley: Do you have any figures, Sarah?

Sarah Rapson: I do not have figures. It is a source of frustration to me. I know the numbers—the volumes—but I cannot tell from these data how long those cases have been in our system. That is more work that we need to do.

Q1254 Baroness Kennedy of Cradley: Caroline's opening remarks about the eight months' time lag are not a surprise to you? If it took eight months, you would not be surprised to hear that.

Sarah Rapson: No; and I think I said by way of response that it is taking too long. That is a priority for us to fix now, yes.

Liam Vernon: There is an interesting correlation between the need for corroboration and the time it takes to make a conclusive decision. I can talk from UKHTC experience. A lot of our cases, as has already been said, come to our attention because there is some law enforcement activity. We often find that we have some level of corroboration, but, more importantly for us, we have a first responder who is making inquiries, whether that is an NGO, the police service or our colleagues from UKVI. That is not something the competent authorities do; it is made by the first responder. I feel that that corroboration really does help us, as the UKHTC, make those decisions probably at a far earlier stage than our colleagues in the UKVI.

In terms of the 45-day target, we also have some challenges around reaching that. The Council of Europe convention stipulates 30 days, and we have 45 days as a guide really; it is not within 45 days, as far as I am concerned. If that person is still receiving appropriate care and we do not have the information to allow us to make a decision—which again comes back to the role of the first responder such as the police service or whoever it may be, who are key partners here—we often find that we are unable to make a conclusive decision in that time frame because we are not getting the information back quickly enough. Other agencies have a critical role to play in that decision-making time frame.

Q1255 Baroness Hanham: I want to carry on with the identification of victims and the role of the NRM. The first responders are made up of some pretty large organisations and there are some pretty small NGOs. Do you think there is any limitation, as far as any of these bodies are concerned, about their ability to identify human traffickers? They may not refer them to the NRM, because they do not think they are trafficked, but, on the whole, the smaller NGOs who think they have got somebody refer them through. Do you think there is a lack of co-ordination, recognition or ability to identify victims among all the first responders?

Liam Vernon: There is quite a bit packed into that, so I will unpick it a little bit. We have a range of different front-line responders. That has changed since this started in 2009. It generally started out as the police service and the UK Border Agency, and local authorities for children. From a public authority perspective, they are the big-bang agencies that you would expect to come across victims and identify them. It has developed since then, as we have got more and more specialist NGOs involved, which for me is very welcome. It changed especially around the last contract, where we had two agencies who were delivering the services. We now have the Salvation Army and a whole range of specialist services. It is very important that we have those specialist NGOs involved. It is also very important that, were we to extend that, it is extended on the basis of need and consistency, and

that they really do bring something to bear around that particular niche market of trafficked victims.

Where we probably see a front-line responder struggling with some of the issues around identifying victims of trafficking, it will be around the police service on the ground, local authorities dealing with adults and children, and people who are transiting our border. For example, you might have somebody coming in at Heathrow, and to all intents and purposes they do not know that they are a victim of trafficking, yet they are; so they won't identify. There are all sorts of complexities.

The key is around training, awareness and understanding what the role of the NRM is. The NRM is about identifying and supporting victims of trafficking. It is not really about much more than that, and yet we are making it more than that—for example, through data collection and linking it to organised crime.

Q1256 The Lord Bishop of Derby: Can I press you a little on that? In terms of the referral, you talked about the identification of victims of trafficking. Quite a lot of our evidence has suggested that it feels like referral for identification purposes rather than to be plugged into the victim care and support that you were talking about. Do you have any comments about how to get that referral working better so that those who need it feel they are plugged into victim support better, rather than feeling that they have been identified to be on a list or in a category?

Liam Vernon: It is both of those. The convention is clear if you look at articles 10 and 12; it talks about identification and appropriate support to allow them to recover and reflect. The convention indicates that you need one to follow the other. Clear identification is about the first-line responder being able to identify some of the indicators and refer them to a body like the UKHTC or the UKVI to look at those indicators and make that decision. Once we have made that decision, they get plugged into appropriate services. With children, obviously it is local authorities. In England and Wales, it is the Salvation Army. The contract that the Salvation Army has now with the Home Office is key to delivery of that.

Q1257 Baroness Hanham: We have heard evidence from some of the NGOs to suggest that the victims themselves do not want to be referred to the NRM because of the data collection aspect. They have come from police states and they are afraid. Is there any way round that? Secondly, do you think that all public bodies should be first responders?

Liam Vernon: On the first bit around concern, the NRM is voluntary for adults. It is by informed consent, so the NRM will never be, in my view, the be-all answer to how many trafficked victims we have. There will always be a group of people who for good, bad or indifferent reasons do

not enter it, do not choose to enter it, do not get identified or, sadly, do not even get rescued from their situation. The challenges we see around them not wanting to enter the NRM are similar in terms of whether they want to engage with the police service at all to instigate criminal proceedings. That is another area that needs improvement, and we are all aware of that.

In terms of whether all public authorities should be front-line responders, I am a little reticent to say yes. The reason is that one of the key roles of the front-line responder is to carry out the right and necessary inquiries as to their case so that they can inform the competent authorities. It is not my staff who go out and interview victims and make inquiries about their status; we rely on the police service, the UKVI, the GLA and other agencies to do that. If you roll that out to Health, the Ministry of Defence and all those other Departments, I do not think they are the right people to do that. The more that we align this to the authorities that have a key responsibility that the public understand, such as the police service, the healthier it will become, and the more it will enable us from the National Crime Agency perspective to begin to chip away at the intelligence, and work on the organised crime groups behind all of this monstrous business, which is what we all want to do.

Q1258 The Lord Bishop of Derby: Do you think the NRM should be extended from human trafficking to all victims of modern slavery?

Liam Vernon: For similar reasons I have some concerns around that. I work very closely with colleagues across Europe from a law enforcement perspective. From a UKHTC point of view, we also work on and support a lot of international reporting, such as GRETA, the US TIP report and the work the UNODC are doing. To get understanding of our trafficking problem, which the Council of Europe convention, the Palermo protocol and the EU directive are there for, and to get understanding of how we compare with others, it is important to have clear parameters around human trafficking and other areas. There is not a requirement according to the convention to extend it into areas outside human trafficking. It would just need some careful consideration of how that would work in practice, because it could be quite a large mechanism.

Q1259 Baroness Doocey: Sarah, you said earlier that you and Glyn visited the team in Leeds last week. How often do you go and visit that team? How hands-on or otherwise are you with the decisions they are making? How are you updated?

Sarah Rapson: I try to get out to meet my teams as often as I can, if you are asking me about my personal contribution. I have quite a wide set of responsibilities in UK Visas and Immigration. I am responsible for

this work, and I am also responsible for the overseas visa operation and the in-country operation. Much as I would like to spend more time with these teams, it is fair to say that I cannot get out to all of the teams. I take a particular interest in how we are treating our vulnerable people. I am the board representative for gender in the Home Office. I support the Home Office women's group, and I previously looked after the transgender group. I have an interest in the people for whom the system does not always work, in addition to being the DG of the whole command.

Q1260 Baroness Doocey: I can understand that. How often in a year, for example, do you think you would get to see the people in Leeds?

Sarah Rapson: I would probably get out and about in my organisation—I know I am not specifically answering your question; probably once every three or four weeks, I will go and spend some time with an operational team. I have 7,500 people in 140 countries.

Q1261 Baroness Doocey: I am just wondering specifically about the team you brought together in Leeds. How often would you get to see them?

Sarah Rapson: I would see them more regularly where there were things of particular concern. At the moment, I would spend more time understanding what they are doing, making sure that things are working well and talking to them.

Q1262 Baroness Doocey: But you couldn't say once or twice, or 10 times or six times, on average?

Sarah Rapson: To be honest with you, I have been in this post permanently for three weeks. I have been temporary for—

Q1263 Baroness Doocey: But you must have a plan.

Sarah Rapson: I have a plan to get out and about in my organisation. I do not have one set out for the next year.

Q1264 Baroness Doocey: But you can't answer the question I have asked.

Sarah Rapson: Your point is, "Sarah, you should spend more time in your Leeds operation." I think that more mainstreaming of our understanding that we have duties around human trafficking across the rest of my command is probably where I can add more value.

Q1265 Chairman: Glyn, if we said your time is measured in hundredths, how much of those hundredths is spent exclusively on trafficking?

Glyn Williams: Perhaps I can go back to the previous question first. I have visited the Leeds office twice in six months. I was appointed to this job in mid-August. I would aim to visit an asylum office about once every three weeks, so I would probably aim to visit the Leeds office three or four times in a full year. Any answer I give you is probably going to be misleading on that. It varies.

Chairman: We will judge that.

Glyn Williams: You asked me quite a pertinent question earlier on, which was why my title does not include human trafficking. That is something we should take away and think about. It is probably fair to say that this has risen up the agenda, not just because of the Modern Slavery Bill but because of the number of referrals we have been getting. Last year, we had just over 1,000 referrals. We were getting low hundreds in 2009—less than 500. Our own staff are becoming far more aware of trafficking indicators and are generating more referrals themselves, as well as those that are coming in from outside. Our awareness of it is very much on a rising trajectory. The underlying point you are making is a fair point.

Q1266 Chairman: Tomorrow we have a Minister for modern slavery. I am just wondering who she talks to in the Department about her work. Liam is different, but you all seem to be doing other things.

Sarah Rapson: We have introduced for the very first time a modern slavery unit into the Department. Mark is sitting behind us. I think we are one of the only Departments to have a unit that does that. It is a relatively new unit. We are taking the policy aspect of immigration and putting it with that unit in the near term.

Q1267 Chairman: I know you have to defend the status quo and you are all doing admirably on that, but William Hague went into the Foreign Office to put the C back in Commonwealth, and there are four people employed on the Commonwealth in the whole of the Foreign Office. One just feels that it is almost the same with the Home Office. It may be changing, but the emphasis on the institution reflecting the priority that the Home Secretary attaches to the issue seems to be escaping us at the moment. That is all. That is another message for you to take back.

Caroline Young: From an NCA perspective, the Minister holds a monthly operational meeting around modern slavery and holds the NCA and other agencies to account for what we are trying to do around

disrupting and tackling the crime groups involved in that. I think there is a very direct relationship and accountability around that.

Chairman: I know one has to fill her diary up.

Q1268 Lord Warner: During the course of this inquiry, I have been trying to get a feel for the relationship between NGOs and your two agencies, and I am left with an uneasy sense of distance. Can you say a bit more about how regularly you meet the main NGOs involved and what part they play in the training of your staff?

Glyn Williams: I am going to talk about asylum again. There is something called the National Asylum Stakeholders Forum, which comprises all the main NGOs, not just on trafficking but on asylum. It meets quarterly and I co-chair it with Maurice Wren from the Refugee Council. That can talk about trafficking. That is the main ongoing routine forum for discussion.

Q1269 Lord Warner: Do they get involved in the training of your personnel?

Glyn Williams: Yes.

Q1270 Lord Warner: You have talked a lot about training. Are they big players in the training?

Glyn Williams: The Salvation Army and a couple of others come in and give presentations, from their perspective, on the training course.

Sarah Rapson: Across my command, I think the work we are doing in asylum, in terms of connecting with NGOs and groups, is quite exemplary. I have met some of the groups—Freedom from Torture and others. It is very well developed in asylum, and I think it is a model for some of the other areas for which I am responsible.

Liam Vernon: From the UKHTC perspective, one of our outstanding strengths is our support to NGOs and our relationship with key NGOs. Yes, we are co-located with the Salvation Army. My NRM staff work with them on a daily basis, and also with all of the NGO first responders. My tactical advisers work very closely with NGOs; for example, we set up reception centres. We work with the Salvation Army, Red Cross and other local NGOs as appropriate. The range of strategic groups that I personally or my staff sit on invariably all involve NGOs in this field, similar to the work that we do with Government.

Q1271 Chairman: One of our specialist advisers brings together about 90 NGOs in this area. Have you ever had an invitation to go and meet them regularly?

Liam Vernon: Which special advisers?

Chairman: He is sitting at the end there.

Liam Vernon: Oh sorry, the Human Trafficking Foundation. I have been to a few of their meetings and delivered presentations, kindly, on the work of the HTC. I always talk about the work that we do with NGOs. The one thing I would say is that there is not one NGO sector that has a unified voice in this field. There are lots of differing voices. That is one of its strengths, but I also feel that that can be enhanced slightly.

Chairman: Yes; and a weakness. Caroline has the last point.

Q1272 Mrs Spelman: The Government have high ambitions for the Bill that we are working on to be a Bill of world class, but we are quite late into this compared with, say, the Netherlands or Finland. Presumably you have spent quite a bit of time looking at how others who have gone before us are faring with their approach to this. Something that is significant is that the Dutch and Finnish rapporteurs both have clear evidence that when you make agencies aware of this problem you see a significant increase. The Dutch have had a rapporteur commissioner in place since the millennium—since 2000. They have a cross-Government working approach to this; five Departments sponsor the work of the rapporteur and yet they are still seeing an upward trend in the number of cases. Surely some contingency planning is needed by yourselves in terms of the volume of work that will predictably come as a result of people becoming less ignorant about the problem. Where in your planning is that capacity building?

Liam Vernon: It is an interesting question, and a very pertinent one. From my perspective, I have seen that growth over the last four years. I think that is one of the successes of the national referral mechanism. It has raised awareness and we have more people entering it. By implication, you would say that some people have more confidence in it, and certainly some first responders understand it more. I think that is going to go from strength to strength. Already this year we have seen an increase of over 20% on last year, and I think that will continue to rise.

The key for me is that, whatever resources you put into tackling an issue, you have to have a strong evidence base. I doubt that my Director General would allow me to go to him today and say, "In two years' time I

expect I am going to need 50% more resources, so I need to build that up today.” I think we are going to have to do what we have continually done over the last three or four years, which is to mainstream it to make it business as usual; in that way you broaden the responsibility and make it a shared endeavour. Key to that is delivery locally in the police service and other agencies. In terms of law enforcement, it is through the regional organised crime units. Another key to it from a law enforcement perspective is ensuring that we utilise our tactical capabilities to target the organised crime groups that sit behind that. It is about prioritising and working across all the law enforcement agencies.

Upstream, I work very closely with the Netherlands. They, together with myself in the UK, chair the European Law Enforcement Group. Finland also sits on that. We have very close relationships. The key is developing those relationships upstream as well, so that our law enforcement partners are with us on the same page, because what is our problem is their problem. It is broadening it. It is not necessarily saying that the NCA has to have all the resources. It is all of our problem, and the more it is made business as usual, the better our response will be.

Chairman: That is a message to take back with you.

Q1273 Baroness Butler-Sloss: I want to look at the UKVI for a moment and the way in which you deal with those referred to you. Do you have any dealings with first responders, or is it entirely coming through from the teams that you have? How do you find the people you look at?

Glyn Williams: Liam will correct me if I am wrong, but I think the process is that all cases initially go to the UKHTC and then they are delegated off to us if they are non-EEA.

Q1274 Baroness Butler-Sloss: That is what I thought. They seem to look quite broadly at the position of a particular alleged victim, and to some extent seek advice and assistance from NGOs as well as social services and of course the police. Are you using any outside agencies to help you decide on either the first referral or the conclusive decision?

Glyn Williams: As I said earlier, we will certainly try to corroborate stories through independent sources—mainly the police, I think. Where medical evidence is important we will obviously seek expert advice on that aspect.

Q1275 Baroness Butler-Sloss: Are you in fact looking at the way UKHTC is making the decisions, and perhaps whether you might seek to gain from their good practice?

Sarah Rapson: Can I answer? We use the same training and guidance. These are not two separate processes. We deal with different kinds of cases that have different levels of complexity, but the training and the guidance is exactly the same, to the extent that we have a couple of UKVI people seconded across to UKHTC to help with the non-EEA cases that do not have an asylum claim. It is not that there are two parallel processes that are just not talking to each other; we have the same process. We think it is the nature of the cases that causes the differentiation in terms of the positive decisions at the various stages.

Q1276 Baroness Butler-Sloss: Could I ask one final question on that? You were saying that a number of possible victims of trafficking got a favourable asylum decision. That decision would not give them the opportunity to have the services that are available to victims of trafficking, would it? The answer is no, it wouldn't, because asylum seekers who are successful are not going to get the help that those who are identified conclusively as victims of trafficking would get.

Glyn Williams: Well, the main thing they get is immigration status. That is quite a big thing.

Q1277 Baroness Butler-Sloss: Yes. If you are an asylum seeker you may have had a rough time, but if you are a victim of trafficking you almost certainly will be traumatised and have had an extremely unhappy time. There are services out there available to victims which are not available to asylum seekers who get through the net. I wondered whether you might consider that perhaps you ought to be looking a little more at some of those people and identifying them as victims, rather than possibly the easier way of giving them asylum status.

Glyn Williams: We have lots of asylum seekers who are not also claiming trafficking but who are traumatised—for example, victims of torture. They are being looked after by organisations such as Freedom from Torture. Victims of trafficking can also have access to those sorts of services. I am not clear, as a matter of fact, what they are entitled to as of right and what they get because it is offered by NGOs. The fact that they get an asylum decision obviously does not deny them that elective care.

Chairman: Dee, do you want to make a last contribution or shall we close?

Baroness Doocey: I think we should close. I am just quite surprised that you did not know the difference between what they were entitled to.

Q1278 Baroness Kennedy of Cradley: It might be my confusion, but is there a hierarchy of decision making between the asylum decision-making process and the conclusive decision-making process for trafficking? For example, if 78% of trafficking victims have an asylum case and that asylum case moves quicker, because you are not reaching the target, than the conclusive decision-making process, and if you then get a negative asylum seeking judgment after an appeal, do you then go immediately or do you wait? Are there victims that have outstanding conclusive decision-making processes but the asylum process has finished before, so they are not getting that chance?

Glyn Williams: I do not think there is a hierarchy. They are separate processes, but we try to run them sequentially. We do the trafficking one first, so first we establish their status under the trafficking convention. If they have claimed asylum, we will look at whether there is a risk on return to them and whether they should then get an asylum decision.

Q1279 Baroness Kennedy of Cradley: There would not be any cases where people who are the victims of trafficking would not have had that case heard because their asylum case had failed previously, because the trafficking one is always first.

Glyn Williams: There should not be. I will not say that there are not any, because these things can sometimes get quite complicated in practice. In theory, that is the way we try to run it.

Q1280 Chairman: A schizophrenic side of your job shows up. If they applied for asylum status and lost, you have a duty to get them out of the country quickly, even though there may be a question about whether they have been enslaved or not.

Glyn Williams: If they have had a positive conclusive grounds decision under the trafficking convention, they may have been given a year's discretionary leave, for example.

Q1281 Chairman: But we are thinking about the alternative: the machinery works faster when they get an asylum status and they may be shown an aircraft before their status for slavery can be determined. Has that ever happened?

Glyn Williams: We would not try to remove them if they had an outstanding trafficking decision.

Chairman: Some of the Committee met someone yesterday.

Q1282 Baroness Kennedy of Cradley: So you can have a negative asylum process decision but still be in the country waiting for your conclusive grounds decision.

Glyn Williams: We do not control when people make a claim. They might make an asylum claim, which we process, and then they could decide to make a trafficking claim after we have finished the asylum claim. We cannot control that. We would then look at the trafficking decision.

Mrs Spelman: Every victim we saw yesterday—to a woman—had been rescued out of Yarlswood, having not been listened to in the beginning. It was only the fact that a pro bono solicitor listened to their story properly and pleaded for their trafficked status to be heard that meant they were given the kind of service that I would expect this country to be able to provide. Every single victim, at one minute to midnight, was retrieved.

Chairman: On that statement, we will conclude. Thank you very much. Well done in defending your brief, which is hopefully going to change radically as a result of this Bill.

Examination of Witnesses

Witnesses: **Zofia Duszynska**, Legal Director, Immigration Law Practitioners' Association, and **Shauna Gillan**, Legal Officer, Immigration Law Practitioners' Association, examined.

Q1283 Chairman: Would you both identify yourselves, and then we will stagger into action.

Fiona Mactaggart: I ought formally to declare an interest, as a person who helped to set up ILPA, but it was a very, very long time ago.

Chairman: That is to your credit, as were all the other declarations we have had.

Shauna Gillan: I am Shauna Gillan. I am a legal officer with the Immigration Law Practitioners' Association.

Zofia Duszynska: I am Zofia Duszynska. I am a solicitor at Hammersmith and Fulham Law Centre and I am on the executive committee of the Immigration Law Practitioners' Association.

Chairman: We have just heard the reasons why you are needed. Let us get into some questioning.

Q1284 Lord McColl of Dulwich: What types of legal services and for what types of claim are victims of human trafficking currently able to access civil legal aid funding? Are there any gaps in the funding?

Zofia Duszynska: At the moment, victims of trafficking can get legal aid for an immigration matter—leave to enter or leave to remain. Once they have a positive reasonable grounds decision, which means they need to have passed that first identification hurdle in order to get legal aid to pursue a standard immigration matter, they can still claim asylum and get assistance with an asylum matter, but not with any other application for leave to enter or remain. For example, for assistance with even accessing the NRM or for preparing a statement in support of their identification as a victim of trafficking, they would not be able to get legal aid to do that until they had already passed that “I suspect but cannot prove” evidential hurdle. They can get legal aid for an employment matter, to pursue a claim for damages, and also, at the moment, for judicial review so that they can challenge a negative reasonable grounds decision. But as they would already have had to have some level of legal representation in order to access the NRM, the initial gateway is really quite hard for them.

Shauna Gillan: The position prior to the Legal Aid, Sentencing and Punishment of Offenders Act, which came into force last April, was that immigration matters were generally in scope. A person who had a meritorious immigration case could go and get access to a lawyer. If that lawyer then spotted indicators that the person was a victim of trafficking, the lawyer could then assist them in making a referral to the NRM, assist them in getting a positive identification from that body and things could flow from that. Now, because the NRM is the gateway to getting in front of a lawyer, we see problems whereby people aren’t self-referring to what they perceive to be the Home Office—because it is; it is housed within the Home Office. Previously they had the support of a lawyer to bring them there and to assist them in making a statement. Now they do not, because it is the gateway to get to the lawyer.

Q1285 Lord McColl of Dulwich: That is quite a gap.

Shauna Gillan: Yes, a substantial gap.

Q1286 Lord McColl of Dulwich: Are there any other gaps?

Zofia Duszynska: There are gaps if, for example, you have made a successful asylum claim and your children are still in your country of origin. Previously, you could have legal aid for family reunion to bring your children. Now, for a victim of trafficking, if you succeed in your asylum claim, there is no legal aid for that essential family reunion

matter. Given that families of victims of trafficking are often in a very precarious situation, which was the push or pull factor for the trafficking in the beginning, that really is quite problematic and leads to a lot of concern about exploitation of other members of the family.

Lord McColl of Dulwich: Thank you. That is very clear.

Q1287 Sir Andrew Stunell: The Government have proposed introducing a residence test for civil legal proceedings. There is an exemption for victims of human trafficking, but how broad is that exemption, and are we looking at another gap in that case?

Shauna Gillan: Another huge gap in terms of the residence test. It is something we are very concerned about. Currently, if you are unable to get yourself through the gateway in the Legal Aid Act, you can still judicially review a wrongful NRM decision. We know that there are many wrongful and erroneous NRM decisions, but currently you have that save. You will be completely cut out under the residence test from bringing a judicial review to get you back in.

Q1288 Sir Andrew Stunell: Do you have any practical examples of cases, which are currently successful, that you are clear would fall outside the exemption?

Shauna Gillan: There was a case last year where it was found that the decision makers in the NRM were applying an unlawful policy. They were finding people who had been trafficked in the past and identifying them as historical victims of trafficking, and saying that they did not need the convention because they were no longer victims of trafficking. The entire policy was unlawful. That was a judicial review brought by someone who had an incorrect NRM decision. That kind of test case would not survive the residence test that is due to be brought in in May.

Q1289 Sir Andrew Stunell: That is a very clear practical example. Do you have others in mind, or will that do? I think it is a pretty conclusive one.

Zofia Duszynska: I think it is. If you have a negative and wrongly founded NRM decision, which has been taken on the basis of information that has been supplied on your behalf but without you having had access to legal representation before, and you then do not have the opportunity to access legal aid to challenge that decision, you cannot have your trafficking matter, or even your immigration matter, dealt with at all. It is fairly fundamental to the process.

Q1290 Sir Andrew Stunell: We have just taken evidence from the people who gave that decision. I do not know if you were present at the back of the room.

Shauna Gillan: Yes, we were.

Zofia Duszynska: Yes.

Q1291 Sir Andrew Stunell: Have you any comment to make on their assertion that they are getting it much more right nowadays?

Zofia Duszynska: This is what we were quite interested in hearing. In terms of the five days for making a reasonable grounds decision, my recent experience is that the reasonable grounds decision in two of the cases I have dealt with most recently has been made within the five days. But in terms of the conclusive grounds decision, I have one that is still waiting since last October, way beyond the 45 days, and with no communication. The policy says that the reflection and recovery period should be extended for 28 days at a time by agreement, but we have not had that level of communication.

I have another victim of trafficking who was identified while in prison, and is now on bail in safe and secure accommodation. He is accessing the very services he should be during the reflection and recovery period. The 45 days has expired, and, despite the criminal representatives chasing UKVI, I would say every 10 days, there is no response on how long that period is to be extended. He is safe and he is receiving services, but because he is also facing a criminal matter it is quite essential as to whether the criminal matter proceeds and whether there is an abuse of process in that, if a prosecution is taken against a victim of trafficking. The whole process is currently stalled while the trafficking matter is, to my eyes at least, not actually proceeding.

Q1292 Sir Andrew Stunell: In relation to the case that you used to illustrate the gap where a completely unlawful policy was being produced, was that HTC or UKVI? Which branch was it?

Zofia Duszynska: It was UKVI.

Sir Andrew Stunell: There is a real surprise for the Committee. Thank you very much.

Q1293 Lord Warner: The contracts under LASPO have now been in effect nearly a year. What has been the effect on the supply side, in the sense that the legal aid contracts with firms suggested that they would take a smaller number of cases? What is your view of what has actually

happened in the legal aid funded firms themselves? Have they simply cut out a lot of trafficking work? Are they doing it pro bono? What has happened on that supply of legal services side?

Shauna Gillan: People are certainly now turning away trafficking cases that they would like to do but because of financial pressures cannot take on. Lawyers are stepping in sometimes and also doing pro bono work. If you are in the area of legal aid, you are there for a reason, and lawyers are going the extra mile and doing that. What is concerning is firms telling us things like, "We need to start doing private work now to make our legal aid practice viable. We are having to spend time, which we would rather be spending on vulnerable victims of trafficking, in private work to keep things afloat." Firms have gone under. If we look at the context of the past two or three years, major providers of legal aid like Refugee and Migrant Justice and IAS—the Immigration Advisory Service—have just folded. We see fewer people doing the work, and the solicitors who are doing the work are less able to respond to the needs of people who very much need their help.

Q1294 Lord Warner: Is it possible to give us a note on the scale of the change which is taking place?

Shauna Gillan: Certainly, we would be very happy to write in and do that. Another point in terms of contracts and matter starts is that there are only five matter starts now for compensation cases. Previously, if you were a firm that specialised in bringing compensation matters, you could do as many as you liked. ATLEU, in their written evidence to this Committee, said that they used to do about 30 a year; now they can only do five. There are very few firms who specialise in doing this type of work, and those that do it are completely hampered now by the cap of five cases. This is something that comes from our obligations under the directive; we need to provide legal aid for the deterrent factor, as well as for redress and the moral duty to compensate victims of trafficking, but they are capped at five cases now. When I say they are capped at five cases, that is miscellaneous matters; it is across a broad range and it is not just for trafficking. Once those five cases have been used up on whatever, if a trafficking victim says, "I would like to proceed with a compensation case," they could be told that that is the end of the matter and the quota is gone.

Q1295 Lord Warner: You are saying that the legal aid contracts with the firms make it impossible for us to comply with the obligations under the directive.

Shauna Gillan: Yes, I would accept that.

Q1296 Baroness Doocey: We have been told that the only formal means of challenging a negative NRM is by way of judicial review. What are the most frequent types of failure of decision making challenged, and would the ILPA be supportive of a statutory appeal for the NRM?

Shauna Gillan: It is a question of how much time the Committee has to hear from us. We could give you some examples. There are fundamental misunderstandings of the test; saying things like, "You are not credible because you came into this country on false documents," instead of understanding that that is an indicating factor for trafficking and that the trafficker has brought in the person under false documents. There is failing to consider any objective evidence whatsoever. There are failures due to out-of-date policies and out-of-date operational guidance notes. This is all very much a feature of NRM decision making. It gives us concern that, now, without the lawyer assisting in that process, because it is the gateway, we will just see further unlawful decision making. If the residence test comes in, there will be no ability to challenge that.

Zofia Duszynska: In the previous session, you referred to the culture of disbelief. We still see complete conflation of the asylum and the trafficking decision-making process. One of the things that I do not think really came out of the previous session was that an asylum decision is a decision about the prospective fear of future risk. It is about what is going to happen when you come home. You don't need to have already been persecuted, although past persecution is an indicator. Trafficking is about past experience. The whole idea that you are making credibility assumptions when you are looking at two separate sets of facts and two separate historical periods is really quite concerning. We see it quite a lot. You are not recognised as a victim of trafficking because you do not face a further risk, or because you have recovered from your experiences. That is another error in the decision making. You may still be in need of assistance to recover from your experiences. Your experiences may have ended, but you are still a victim of trafficking. The fact that the decisions are being made by the same body, but looking at two entirely separate processes, is something that hugely infects the decision making.

Chairman: That came out quite clearly, Zofia.

Q1297 Baroness Doocey: Are these usually UKVI or UKHTC failures?

Shauna Gillan: UKVI, broadly.

Zofia Duszynska: We do not see so many of the UKHTC decisions, because they are not concerned with people who have an immigration problem.

Q1298 Baroness Doocey: Would you be supportive of a statutory appeal mechanism for the NRM?

Zofia Duszynska: Yes.

Q1299 Baroness Doocey: Do you think it is the right way to go?

Shauna Gillan: We would rather see the decision making improve. The big ask would be removing the national referral mechanism from the ambit of UKVI. That would be step one. Failing that, an appeal against what we see as very poor decision making is something that we would accept.

Q1300 Chairman: The DWP, to try and improve its decision making, has a review process put in before an appeal process. Would that not help here?

Zofia Duszynska: That would be similar to the housing process as well, where you have a review and then a statutory appeal against it. It is clearly less costly than doing a judicial review. I suppose the issue would be whether the same pair of eyes was conducting the review. At the moment, you can request a review of your NRM decision, but it will be the same pair of eyes. You would want a review by somebody different—a different pair of eyes—and then potentially a statutory appeal.

Q1301 Baroness Butler-Sloss: With the importance of trying to get this through, possibly a statutory appeal might be a step too far, but what do you think about having a review by some independent person who was unconnected with UKVI? Would that meet the need?

Zofia Duszynska: With all of these things, the process of the NRM and the decision making is so flawed at the moment that, before we had another pair of eyes looking at something, we would want to improve the decision-making process in the first place. The delays in the system are bad enough at the moment, and are affecting people's recovery times. People's recovery depends on whether they feel safe in the UK, so as long as referring it to another body did not increase the delays in that process—

Shauna Gillan: Improving the reviews and appeals coming from the NRM does not address the problem of people not getting in the door in the first place to the NRM—being completely deterred from going to the Home Office because they have a precarious immigration status. That is a huge concern. If we are only seeing the tip of the iceberg in terms of actual victims of trafficking, and then we are only seeing a subset of

those being referred to NRM, it keeps diminishing. The focus should be on those kinds of issues.

Q1302 Baroness Hanham: I want to stick on the decision-making process. Do you think it would be of any help if the NRM had the same tests on decisions as the asylum cases—that is, to a reasonable degree of likelihood? At the moment, the NRM's is not the same as that for asylum. You are obviously pretty critical of the process of NRM decision making, but do you think changing that would make any difference?

Zofia Duszynska: We are broadly supportive of that, provided the test is correctly applied. While we were listening at the back, we were trying to work out what the historical basis was for having a different test. I remember, from when this was introduced, that the first test—the “I suspect but cannot prove” test—was the basic criminal justice test, the test the police use, and then for the conclusive grounds test they went for the basic civil standard of proof: not the burden of proof, the standard of proof. I do not think that at that point it was considered that the two processes—the immigration process and the trafficking decision-making process—would be conflated to the degree that they are. To bring the standard of proof down to the asylum standard of proof would make sense. It would make it easier for the decision makers because they would be looking at the same standard across the board, but we would still return to our same argument—that the decision making should not be within UKVI, but should be within a body that is not concerned with doorkeeping.

Shauna Gillan: The thing about those standards is that they look like one thing on paper, but, in our experience and in practice, much higher thresholds are applied. The danger with having different standards is that, as is very often the case, when the same decision maker is making both tests, if the decision maker finds someone to be not credible on a balance of probabilities analysis, they are then very unlikely to go on a lower threshold and say that the person is credible for that 10% real risk threshold. It certainly causes confusion, and a lowering of the bar in general would be something that we would support.

It was interesting for me, sitting at the back and listening to the evidence that went before, to hear the number of times the word “corroboration” was used by the witnesses. There is no requirement for corroboration in either of these settings, in either asylum or trafficking, yet we had repeated references; for example, justifying the disparity between the 80% for EEA and non-EEA being 20% as saying, “Well, there is corroboration for the EEA nationals.” Since corroboration is not required

at all, it should not be making a difference. What it illustrates is that the decision makers think that it is required, and that it makes a difference.

Q1303 Chairman: It is also that decision makers should not be sent out to defend that brief, should they?

Shauna Gillan: I am sorry; how do you mean that?

Chairman: If I was Home Secretary I would be ashamed that my officials had to come and make the performance that we have just witnessed.

Shauna Gillan: I'd like to take the fifth amendment on that.

Chairman: There is something so fundamentally wrong with the policy that we should not put public officials in the position of having to come and defend the indefensible.

Shauna Gillan: I agree.

Baroness Doocey: I think they were quite happy with it.

Chairman: That is the problem.

Baroness Doocey: I would love to think that they were ashamed, but they certainly weren't.

Chairman: That may well be true, but I wanted to be as charitable as possible.

Baroness Butler-Sloss: You are not including the UKHTC, which I think does a good job. I think your comments need to be more directed—more focused.

Chairman: As always. Ian, a focused question, please.

Q1304 Lord McColl of Dulwich: ILPA supports a system of guardianship. To what extent does the recently launched personal advocate scheme meet the needs of children who have been trafficked?

Shauna Gillan: The answer to that is that we would like to have more information about it so we could tell you.

Lord McColl of Dulwich: So would we.

Shauna Gillan: I am sure it is a coincidence that it was announced around the same time as this Bill. All we know is that it does not reach the level of legal guardianship, which is what we so badly want to see as legal representatives. We are completely hampered in any case dealing with a child in terms of asking them to make a tactical legal decision or a financial decision. There is no one with parental

responsibility to have the child's best interests put first and foremost. I know that Zofia has seen many examples of this in her practice.

Q1305 Lord McColl of Dulwich: Why should guardianship be included within the Bill rather than remain a matter of policy?

Zofia Duszynska: I think this goes to scrutiny. If it remains within policy—this is a slightly cynical comment on UKVI policy—we know that policies can change without sufficient scrutiny, whereas, if it is within the Bill, it would be on the face of the statute and it could not be subject to alteration, whim or random application. Any changes and any failure to implement it would be subject to scrutiny. That is our concern; there needs to be something in place which has a nationally applicable standard and is not subject to the budgets or the whims of individual social services departments.

In terms of the representation of children, it really is quite important that that is the case. Although many social services departments do a great job of minding the victims of trafficking that are in their care, for the most part they are not under a full care order but are just accommodated under the Children Act. As Shauna says, there is nobody with parental responsibility. As the child or young person gets older, they are moved from the children's team to the 16-plus team to the leaving care team. There is no continuity of care or knowledge, and there is a huge turnover within social services departments. A guardian with a national remit and legal standing would be much better placed to represent a child throughout the full legal process, without that same conflict of interest.

Q1306 Lord McColl of Dulwich: Thank you. We have had people telling us that what is needed is to take the social worker service, improve it and make that work. What do you think about that idea?

Shauna Gillan: There are numerous problems. Social workers are not trained to make legal or immigration decisions. You are asking the question like a lawyer, knowing the answer before it is asked.

Q1307 Chairman: It would take pressure off social services, wouldn't it, because they know that this would be dealt with adequately and they could get on with something else?

Shauna Gillan: And focus on their expertise, which is welfare of the child and not a holistic approach.

Zofia Duszynska: A social worker cannot sign a form on behalf of a child unless the child has a full care order in place. For example, even getting legal aid for a child is problematic without somebody to take parental responsibility and sign the forms. At the moment, with these

new restrictions on legal aid, if you wanted to take a judicial review on behalf of a child, although you would need a litigation friend before the High Court, and the Refugee Council children's panel would perform that role, we are under pressure from the Legal Aid Agency to enter into conditional fee agreements with children. A child cannot be expected to enter into that kind of credit agreement, but they need somebody to advocate on their behalf and say that this is not going to be a viable alternative.

Q1308 Chairman: What the Home Secretary has proposed is a step forward though, isn't it?

Shauna Gillan: Perhaps a baby step forward.

Zofia Duszynska: It does not seem to be sufficiently described for us to be able to give a proper view on it.

Shauna Gillan: Bearing in mind that it is our legal obligation under article 6 of the directive to provide these guardians, I do not think a baby step is good enough. That was meant to come into force last April.

Chairman: Elizabeth, a last focused question.

Q1309 Baroness Butler-Sloss: We were told by the Director of Cafcass that a number of children who are trafficked go through the care system; those children are getting Cafcass guardians. What is your view about whether Cafcass, if they had the finances, would be appropriate to do all these children, or do you look for a specialised guardian for trafficked children?

Zofia Duszynska: As an immigration lawyer, I have had limited contact with Cafcass, but the contact I had was in the context of the children of an adult victim of trafficking. The Cafcass worker who was involved in that case had insufficient time and resources to properly support the family. If sufficient resources were available, that is potentially the way forward, but my experience is not that many child victims of trafficking end up with full care orders. I have represented about 40 to 50 child victims of trafficking, and I have only had one who had a full care order.

Q1310 Chairman: You must be the most knowledgeable person in the country if you have done 40 or 50.

Zofia Duszynska: No, I think probably Chris Beddoe is.

Chairman: But you have actually represented them.

Zofia Duszynska: We have done a lot of child victims of trafficking. I am still representing many child victims of trafficking.

Q1311 Chairman: Thank you. Thanks for your evidence and for raising our spirits.

Zofia Duszynska: If I might, I want to add something about the support available for recognised victims of trafficking after they get a residence permit, and the difference between succeeding in an asylum claim and succeeding in a pure trafficking claim. Although while you are in the reflection and recovery period you will get accommodation and services that are probably superior to those for an asylum seeker, once you get refugee status you are eligible for housing assistance and other services. Since the changes to the private life and article 8 applications introduced by the Home Office last year, residence permits are now being issued with a restriction on public funds, which means you would not be eligible for benefits and you would not be eligible for housing assistance. Given the situation of victims of trafficking, who have often come from an exploitative work or financial situation, that is something we have to challenge in the High Court and it is something that we would like to be raised further.

Chairman: Yes, with mega costs. Again, thank you very much.