

Written evidence submitted by JustRight Scotland

JustRight Scotland (JRS) is Scotland's legal centre for justice and human rights. We use the law to defend and extend people's rights. We operate 4 national centres of legal excellence providing direct legal representation, legal outreach, and legal education: (i) the Scottish Refugee & Migrant Centre; (ii) the Scottish Women's Rights Centre; (iii) the Scottish Anti-Trafficking & Exploitation Centre; and (iv) the Scottish Just Law Centre.

The Scottish Anti-Trafficking & Exploitation Centre is the only specialist legal project in Scotland that provides direct legal advice and representation to child and adult survivors of trafficking and exploitation in Scotland regardless of nationality, gender, type of exploitation and geographical location.

Although our work is specific to Scotland, our work covers both devolved and reserved policy areas, and as such we endeavour to respond to policy consultations across both Scotland and UK, where appropriate. We have contributed to the Anti-Trafficking Monitoring Group (ATMG) UK wide consultation response. Therefore, this response will focus on the situation in Scotland.

The responses to the inquiry questions are rooted in our work providing direct legal advice and representation to child and adult survivors of trafficking and exploitation, along with experiences and trends shared by partner organisations.

1. What is the scale and nature of human trafficking in the UK? Considering in particular:

- a) Different types of exploitation (including sexual, labour, or criminal exploitation)
 - b) The profile of victims and perpetrators,
 - c) The gendered aspects of human trafficking,
 - d) The role of technology in facilitating human trafficking.
- a) Different types of exploitation (including sexual, labour, or criminal exploitation)

Our response to this question based on our own direct case work experience, or our experience supporting frontline professionals and statutory authorities through our second-tier advice service and information shared by partner organisations and other stakeholders.

In Scotland, as with the rest of the UK, we have seen the numbers of referrals to the National Referral Mechanism (NRM) increase year on year. In Scotland, the numbers have risen from 228 in 2018 to 419 in 2021 – and UK-wide from 6,993 in 2018 to 12,727 in 2021¹. However, it is likely that this is not due to an increase in the

¹ [Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary, 2021](#)

number of people being trafficked and exploited, but rather, increased awareness of this issue has led to a growth in the number of referrals to the NRM.

The numbers captured by NRM statistics only include victims of human trafficking that have been referred to the NRM. The true numbers of victims of human trafficking and exploitation in Scotland, and across the UK, are likely to be much higher. We are aware that a considerable number of victims choose not to be referred to the NRM due to concerns over delays in decision making, which in turn impact on the resolution of other legal matters, such as asylum claims.

We also highlight that if the victims are British nationals, they are often not identified as victims of trafficking; therefore, they are not referred to the NRM, which will impact the reported numbers.

b) The profile of victims and perpetrators,

When considering the profile of victims of trafficking, every experience of trafficking and exploitation is different, as people often experience multiple forms of exploitation. Our comments speak to some of the more common issues we see in our casework and the general observable trends in profiles of victims and perpetrators.

All victims of trafficking we have encountered had been in the very vulnerable position of having to rely on someone else for their safety, sustenance, and opportunities. Risk factors often included poverty, lack of opportunities and/or social mobility, unstable family structures (primarily for children and women), limited education, immigration status, and fragile health. With women and girls who have been trafficked for the purpose of sexual exploitation, they have often been subjected to sexual exploitation outside the UK before being sold and trafficked to the UK.

We routinely see perpetrators belonging to criminal gangs, connected throughout UK-wide organised networks and beyond. Additionally, many migrant victims of trafficking we work with have been exploited in other countries prior to being trafficked to the UK, indicating the prevalence of international criminal networks in operation. In these circumstances, we see traffickers of different nationalities working together to facilitate the exploitation of victims.

We are also seeing legitimate visa routes, such as the seasonal worker visa and care worker visas, being used to facilitate exploitation. In 2022 we hosted a Scottish Government funded 6-month pilot, the Worker Support Centre (WSC), aimed at providing information, advocacy, and legal advice to workers in Scotland on the Seasonal Worker Visa. Through this pilot we became aware of workers who entered the UK on these visas being financially exploited prior to entry, which results in a debt-bondage situation where workers are unlikely to report any ill treatment due to fear of losing their employment. The short-term nature of the visa and isolated location of the farms also means that workers are mostly unaware of who to contact for assistance when needed. We are also aware that many workers are being subjected to, at best, unjustifiably poor employment practices and living conditions.

Through our work we have seen the implementation of the Ukrainian sponsorship schemes without appropriate resourcing of local authorities and access to suitable housing causing increased vulnerability and putting people at risk of exploitation. As most Ukrainian refugees in the UK are women and girls, there are serious concerns regarding their vulnerability to exploitation, particularly sexual exploitation, and we highlight the wide reporting of traffickers preying on Ukrainian refugee women and children since the start of the war in Ukraine. As such, we expect to see increased numbers of Ukrainians at risk in the coming months due to ongoing issues with accessing longer-term accommodation and support, as well as the lack of leave to remain provisions at the end of the three-year permission to stay in the UK.

c) The gendered aspects of human trafficking,

In our work, we see a gendered aspect to trafficking. For example, women and girls often experienced some form of sexual exploitation. This is reflected in the national NRM statistics, with sexual exploitation being the most common form of exploitation for women² (both in Scotland and across the UK). In Scotland, 67% of women referred to the NRM in 2021 experienced sexual exploitation, either on its own or in combination with other types of exploitation. However, we also see men and boys that have experienced sexual exploitation (for example 7% of boys and men referred to the NRM in Scotland in 2021 had experienced sexual exploitation), particularly in relation to other forms of exploitation, such as criminal exploitation.

Although we have stated above that there is an increased awareness around human trafficking, more needs to be done around identifying boys and young men as victims of trafficking for the purpose of sexual exploitation. For example, some victims involved in “county lines” (exporting illegal drugs into one or more importing areas in the UK, using dedicated mobile phone lines or other form of “deal line”) also experience sexual exploitation as well as criminal exploitation.

We are also aware of men and boys who have been subjected to criminal exploitation specifically in relation to working in cannabis cultivation, who are usually arrested and charged with criminality, without consideration of them being victims of trafficking, despite standing instructions by the Lord Advocate of Scotland setting out a presumption against prosecution of victims of human trafficking for crimes committed whilst a victim³. We are nevertheless aware of several victims of trafficking being advised to plead guilty for offences due to lack of awareness of trafficking in the different limbs of the criminal justice system, and as such, have been incarcerated. We have been involved in working with criminal defence solicitors to successfully have criminal charges dropped as well as overturning convictions in this regard.

d) The role of technology in facilitating human trafficking.

² [Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2021: data tables](#). Table 3

³ <https://www.copfs.gov.uk/publications/lord-advocate-s-instructions-non-prosecution-of-victims-of-human-trafficking/html/><https://www.copfs.gov.uk/publications/lord-advocate-s-instructions-non-prosecution-of-victims-of-human-trafficking/html/>

Regarding the use of technology in facilitating human trafficking, we see cyber trafficking on the increase. Victims are being recruited via social media with the offer of legitimate employment in another country, only for them to find they have been trafficked once they arrive in the other country. This is more often seen in cases of women being sexually exploited. Similarly, traffickers use the “lover-boy method” of grooming women, causing them to believe they are travelling to meet their new romantic partner, only to be forced into commercial sexual exploitation upon arrival, often still under the misapprehension that they are in a romantic relationship with their trafficker. We have also seen dating websites being used to recruit women into trafficking for sexual exploitation.

We see many of our clients being controlled by traffickers through their phones. We see victims being both identified as a potential “target” and being located when they have escaped, through social media.

Further, trafficking and exploitation have moved online since Covid-19. Fake and/or multiple online profiles on “escort” and webcam sites are being used to facilitate trafficking for the purpose of sexual exploitation. A key difficulty with online sexual exploitation of adults is being able to distinguish between women who are choosing to engage in sex work from those who are victims of trafficking.

We are also aware of globally marginalised groups, such as trans women, being particularly vulnerable to trafficking for the purpose of sexual exploitation, including through social media.

We are aware that certain social media and messaging apps used by migrant communities are used to advertise for work in the hospitality industry, often aimed at individuals with unstable immigration status, as well as controlling and moving victims from client to client (sexual exploitation) and trafficker to trafficker.

Child sexual exploitation continues to be facilitated and disseminated online and through messaging apps. Due to technology providing global access, it is often difficult to locate victims even if authorities become aware of the exploitation.

The proliferation of crypto currency offers the opportunity for anonymous and untraceable transfer of money in payment for the exploitation of others.

We also note that basic or “burner phones” play a key role in the exploitation of individuals through “county lines” with this criminal enterprise being built on mobile phone technology.

2. How effective is the UK’s approach to discouraging the demand that leads to trafficking?

Based on our experience and expertise, the UK’s approach to discouraging the demand that leads to trafficking needs improvement. We highlight the failure to challenge the demand for sex and sexual services, both of which fuel the trafficking of victims into these industries, in both Scotland and across the UK.

On tackling the demand that fosters trafficking for the purpose of sexual exploitation, in 2021 the OSCE (Organisation for Security and Co-operation in Europe) released a Occasional Paper highlighting the importance of addressing the demand that fosters trafficking for sexual exploitation, which states:

“Particular attention should be paid to developing holistic approaches that encompass a variety of complementary interventions and that account for the broad concept of demand articulated within the Palermo Protocol—the demand that fosters exploitation which leads to trafficking⁴.”

The Scottish Government's Trafficking and Exploitation Strategy was published in 2017. The Strategy is required under section 35 of the Human Trafficking and Exploitation (Scotland) Act 2015 and 'sets out such actions, arrangements and outcomes as the Scottish Ministers consider appropriate in relation to the conduct which constitutes an offence under this Act⁵.'

The Strategy has brought together key stakeholders in Scotland, including JustRight Scotland, to work in partnership in relation to Scotland's antitrafficking responses, and is currently under review. Based on our experiences, the Strategy has provided a framework for increased partnership working, however there unfortunately limitations to its efficacy due to the diverse nature of organisations involved, for example, civil society organisations, NGOs, and low enforcement. It is hopes that the review will address these shortfalls.

Despite attempts by the Scottish Government and local authorities to tackle the demand for buying sex and sexual services, there is a need to see more meaningful co-ordinated efforts to tackle the demand for buying sex and sexual services. We highlight the OSCE estimates that trafficking for the purpose of sexual exploitation generates profits of around £80 billion annually and that “traffickers are incentivised to exploit women due to the obscene profits from the buyers of sex⁶.”

Another approach to tackling demand is the successful prosecution of traffickers which result in heavy penalties. However, the prosecution of traffickers is concerningly low, therefore the criminalisation of trafficking has resulted in little deterrent to traffickers. For example, in September 2022, Scotland saw a successful prosecution of five connected traffickers, however the last previous major trial of traffickers was in 2019. Since the Human Trafficking and Exploitation (Scotland) Act 2015 came into force on 31 May 2016 there have been a total of 5 trafficking offences prosecuted since then up to and including 2018-19. Two of them were in 2017-18 and three in 2018-19.

Exiting the European Union has resulted in a significant loss of workers in the UK, particularly in the areas of seasonal agricultural work and the care sector. The Seasonal Worker visa was created, and the Health and Care Worker visa opened to include care workers and home carers through the changes to the Shortage Occupation List to address this shortage of workers. Due to the lack of safeguards in place to ensure workers are protected at all stages of the process, we are aware that

⁴ *Discouraging demand that fosters trafficking for the purpose of sexual exploitation*, OSCE, p18.

⁵ [Human Trafficking and Exploitation \(Scotland\) Act 2015](#), 35(2)

⁶ <https://www.scotsman.com/news/opinion/columnists/as-ukrainian-refugees-fall-prey-to-sex-traffickers-scotland-has-a-duty-to-tackle-demand-for-prostitutes-valiant-richey-osce-3718538>

these visa routes are being used to exploit workers prior to and while in the UK, including being debt-boded, unlawful deductions of wages to repay debt, being forced to take up employment contrary to immigration permissions, unsafe accommodation and working conditions, and unpaid labour.

3. To what extent do support services meet the needs of victims who have been trafficked in or to the UK?

In Scotland, most service provisions are based in Glasgow. These services make a real difference, but due to increasing demand and limited resources, they are often overwhelmed. Outside the central belt (which runs between Edinburgh and Glasgow), services often do not have the resources or specialist knowledge required to fully support victims of trafficking.

Fundamental changes to victim identification and rights implemented through the Nationality and Borders Act 2022 (NABA 2022) significantly impact on victim-survivors accessing the protections available through a positive Reasonable Grounds Decision (RGD) from the NRM, which are highly likely to hinder the ability for relevant organisations to meet the general outcomes.

In our casework, this is already proving to be a barrier for individuals to access support. We have already seen that individuals are receiving negative RGDs, and we are concerned that many will be prevented from accessing safe accommodation and subsistence and will be homeless and destitute, and at heightened risk of further exploitation and/or reprisals from traffickers.

Vulnerable migrants being housed for indeterminate periods of time in hotel accommodation not only impacts on their physical and mental health, but it also heightens the risk of being located by their traffickers, as well as increases their vulnerability to being trafficked and/or exploited.

In our experience, local authority support to access housing for victims of trafficking has been difficult to secure, including when the victim is a British citizen with entitlement to social housing. This has resulted in victims remaining in unsuitable accommodation and continuing to feel unsafe without the ability to properly engage with therapeutic interventions, which impacts on their trauma and ability to rebuild their lives. Several victims we represent have expressed that as they continue to experience delays in their rights being met, their trust in the system has significantly diminished.

We also continue to see significant difficulties in victims accessing support post-recognition as a victim of trafficking with leave to remain in the UK. Support is often focused more on short-term support and accommodation and the lack of long-term specialist support for victims places them at risk of further exploitation and re-trafficking.

Human trafficking and exploitation are viewed through an immigration lens rather than a victim care/victim rights lens as should be the case. The outcome of this is

that support services are required to frame their assistance in line with immigration processes rather than the needs of the victim, and as such often fall short of providing the requisite care to victims. The increasingly hostile environment for migrants in the UK, will further exacerbate this issue.

If passed, the new Illegal Migration Bill 2023 will remove protections for victims of trafficking, as well as cut across Scottish Parliamentary powers to legislate for support for survivors of trafficking in Scotland.

4. What evidence is there, if any, that the National Referral Mechanism process is being exploited by individuals seeking asylum in the UK?

We preface our response by noting that it does not clarify for what purpose and/or in what way a person seeking asylum in the UK would seek to exploit the NRM process. Therefore, our response will address what we believe are significant considerations on this alleged issue.

The solicitors in JRS and the Scottish Anti-Trafficking and Exploitation Centre have collectively over 40 years of experience working with victims of trafficking who are also seeking asylum in the UK, with our experience pre-dating the NRM. We can state that we have not encountered a single person who has self-identified as a victim of trafficking. Indeed, an overwhelming majority of individuals we have worked with have no awareness of what human trafficking is and many struggle to accept that they are indeed victims of this serious and inhumane crime.

This is recognised by both the [Modern Slavery: statutory guidance for England and Wales](#) which notes:

“In practice it is not easy to identify a potential victim – there are many different physical and psychological elements to be considered as detailed below. For a variety of reasons, potential victims of modern slavery may also ...not recognise themselves as having been trafficked or enslaved⁷...”

And the [National referral mechanism guidance: adult \(Northern Ireland and Scotland\)](#) which notes *“Victims may not be aware that they are being trafficked or exploited⁸.”*

It is our position that the NRM is not designed to be open to exploitation. Individuals cannot self-refer to the NRM. Only First Responders can refer individuals to the NRM, a status that is held by a limited number of organisations across the UK. These First Responders have been identified due to being considered by the Home Office as having the specialism and expertise to be able to reliably recognise indicators of trafficking when they encounter a victim of trafficking and make the informed decision to refer them to the NRM. These indicators are identified not only through the victim’s account but also by physical indicators, assessment of their

⁷ [Modern Slavery: statutory guidance for England and Wales \(under s49 of the Modern Slavery Act 2015\) and non-statutory guidance for Scotland and Northern Ireland \(accessible\)](#), 2023, para 3.6

⁸ [National referral mechanism guidance: adult \(Northern Ireland and Scotland\)](#), 2022, para3.

presentation and demeanour, and circumstances in which they came to the attention of the First Responder. In short, an asylum seeker cannot ask to be referred to the NRM; this is a decision only the First Responder can make.

Once referred to the NRM, the Single Competent Authority (SCA) is responsible for making a Reasonable Grounds Decision (RGD) where they must consider whether there is sufficient evidence (subjective and objective) to show on the balance of probabilities, that the individual is a victim of trafficking but falling short of conclusive proof. Prior to 30 January 2023, the standard of proof at this stage was “it is reasonable to believe that a person is a victim of human trafficking or slavery” with the test being “I suspect but cannot prove this person is a potential victim of human trafficking” (as it is expressed in the previous Home Office guidance on the Modern Slavery Act). Following a positive RGD, the SCA will continue to assess the case, gathering further evidence to make a Conclusive Grounds Decision (CGD), as to whether the individual is conclusively a victim of trafficking or not, on the balance of probabilities. The SCA oversees the decision-making process, with access to medical evidence, law enforcement and country information and objective evidence. It is therefore difficult to see how an asylum seeker can influence this process which is quite remote.

Importantly, it is unclear what, if any, advantage there is to be gained by entering the NRM process. An asylum seeker will, if destitute and unable to secure accommodation, be allowed access to asylum support on claiming asylum. If entered into the NRM, they can face days without accommodation and subsistence while they await the RGD, and if it is negative, a request for reconsideration rests in the hands of the First Responder or legal representative, with there being no guarantee that it will result in a positive RGD.

The NRM only provides a short period of leave to remain in the UK (Temporary Victim Stay) and in only extremely limited specified circumstances. Additionally, it can and does take years for a CGD to be made by the SCA.

There is no discernible benefit to an asylum claimant being entered into the NRM and with the NRM process and procedure being outside the control of the victim, it is not a process that is open to exploitation. The SCA at the Home Office has full control over the decision-making processes in the NRM.

5. How can legislation, including the Modern Slavery Act 2015, policy and criminal justice system practice be improved to prevent and address human trafficking?

Our ongoing main concern is the impact of the changes brought in by the NABA 2022, and the severe implications of the new Illegal Migration Bill 2023, if passed. There has been an ongoing move towards the criminalisation of migrants and the removal of safe and legal routes. This increases the vulnerability of migrants and risk of trafficking and exploitation.

Human trafficking and exploitation are recognised internationally as a human rights violation, and as such law and policy in this area should be viewed through a human

rights and victim care lens. Instead, in the UK is addressing it as an immigration control issue.

Although human trafficking and exploitation is an area that primarily relates to adult and child safeguarding, and criminal justice, which are all devolved functions, how victims of trafficking are identified in Scotland is through the NRM. We are already seeing the adverse impact of the changes to the identification of victims in Scotland brought in by the NABA 2022 to the Modern Slavery Act 2015, and there will be further severe erosion to the rights of victims of trafficking in the UK that will be brought in by the Illegal Migration Bill 2023 when it becomes law.

The changes to the definition of Victim of Trafficking brought in by Regulation 3 of the Slavery and Human Trafficking (Definition of Victim) Regulations 2022 is a further example of the implementation of legislation to exclude victims of trafficking accessing the support they need. The new definition requires travel to be identified as a victim of trafficking. Neither travel nor movement is required in the international legal definitions of trafficking (for example, the Palermo Protocol, European Convention on Action against Trafficking (ECAT), and EU Trafficking Directive - Directive 2011/36/EU).

The unabating and extremely hostile environment towards migrants created by UK government policy and immigration legislation that have recently come into force and is currently going through Parliament as the Illegal Migrant Bill, has and will continue to erode any efficacy of the Modern Slavery Act 2015 (MSA 2015). This will equally impact on Scotland as the NRM applies UK-wide, and changes made to the identification process and disqualification criteria as provided by the MSA 2015 will, in turn apply to Scotland. These changes will discourage victims to seek assistance and enhance the risk of their continued exploitation. Similarly, the Scottish legislation Human Trafficking and Exploitation (Scotland) Act 2015, relies on the NRM identification process in relation to the provision of assistance and support to victims of trafficking, albeit the duty to provide this being that of the Scottish Government.

The changes to the treatment of victims of trafficking proposed in the Illegal Migrant Bill (the Bill) are that victims of trafficking will be subjected to removal procedures if they meet the removal criteria. The Bill makes removal possible during the Recovery & Reflection period, revocation of Victim Temporary Stay leave if this is the only obstacle to removal, with the only protection against this being cooperation with a public authority investigation or criminal proceedings connected to the victim's trafficking. The Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) explicitly prohibits removal of victims (Article (13(1)) with the provision that this does not apply if grounds of public order prevent it or where victim status has been claimed improperly. The Bill circumvents this prohibition by designating illegal entry as a threat to public order. The outcome of these proposals is that victims will not be able to come forward to seek assistance due to the risk of removal from the UK thereby being further subjected to exploitation. In our experience, most victims of trafficking have been forced to enter the UK without permission.

It is also our experience that due to the nature of trafficking it is extremely difficult for victims to be able to identify their exploitation to the point where they are criminally prosecuted. Additionally, the Bill explicitly restricts Scotland's duty to provide support and assistance to victims of trafficking who are to be removed, which raises concerns regarding human rights breaches. While the Scottish criminal justice process is separate, it relies on a positive Conclusive Grounds decision through the NRM when implementing the non-punishment principle in relation to victims of trafficking, which is impacted on by the changes in standard of proof for Reasonable Grounds Decisions. Additionally, there are concerns that increase in the standard of proof can compromise the victim's right to a fair trial and right to a defence. To ensure the Modern Slavery Act 2015 and the criminal justice process is fit for the purpose of addressing and preventing human trafficking, all anti-trafficking policy and legislative responses must, at the very minimum, be consistent with international standards.

Wherever possible, the Scottish Government must seek to separate from the UK NRM process and legislation relating to the rights and treatment of victims of trafficking. At present, Glasgow is a pilot site for the Devolved Decision making for children referred to the NRM, which successfully and effectively takes a multiagency and multidisciplinary approach to decision making, with child interest and child protection at the heart. A similar model of identification focussing on victim care and protection should be implemented, where identification is undertaken by experienced professionals. We note the long-standing criticisms of the NRM not being fit for purpose prior to the NABA 2022 coming into force, thus the outcome of new legislative and policy changes on the treatment of victims of trafficking has been only to shatter an already broken system. To meet the international legal obligations the UK has towards victims of trafficking, these recent changes need to be reversed and focus brought to prioritising the needs of victims of trafficking.

March 2023