

REPORT

**ACHIEVING A
DURABLE SOLUTION
FOR TRAFFICKED CHILDREN**

**FOR
EVERY
CHILD IN
DANGER**

unicef 
UNITED KINGDOM

ACHIEVING A DURABLE SOLUTION FOR TRAFFICKED CHILDREN

Laura Tuggey and Terry Smith

ACKNOWLEDGEMENTS

With thanks to members of the advisory group for this research: Jeremy Bernhault, Mohbuba Choudhury, Nadine Finch, Helen-Marie Fraher, Adrian Matthews, Sheila Melzak, Baljeet Sandhu, Sarah-Jane Savage, Chloe Swift, Natalie Williams.

Also, thanks to Sam Whyte, Piya Muqit, Dragan Nastic, Lisa Payne and Kamena Dorling.

ABOUT UNICEF

Unicef is the world's leading organisation for children, promoting the rights and wellbeing of every child, in everything we do. Together with our partners, we work in 190 countries and territories to translate that commitment into practical action, focusing special effort on reaching the most vulnerable and excluded children, to the benefit of all children, everywhere.

As a registered charity, Unicef UK raises funds to protect children in danger, transform their lives and build a safer world for tomorrow's children. Unicef UK also lobby and campaign to keep children safe around the world, and run programmes in UK schools, hospitals and local authorities.

CONTENTS

Executive Summary	5
1. Background and methodology	9
2. International and UK domestic law and guidelines	
2.1 Trafficking	10
2.2 Durable solutions	11
3. Research findings	
3.1 Durable solutions planning in practice	12
3.1.1 Identification of child victims of trafficking	
3.1.2 The National Referral Mechanism (NRM)	
3.2 Responsibility for deciding durable solutions	15
3.3 Integration in host country	16
3.3.1 Seeking leave to remain in the UK	
3.3.2 Unaccompanied asylum seeking children (UASC) leave	
3.3.3 The decision-making process and its impact on children	
3.3.4 Delays in the decision-making process	
3.4 Legal representation and independent advocates/guardians	18
3.5 Local authority support and care for trafficked children	18
3.6 Leaving care services and trafficked young people	22
3.7 Psychological impact of trafficking and support	23
3.8 Differential treatment	23
3.9 Support at transition points	25
3.10 Child trafficking in a child protection framework	26
3.11 Return and reintegration	27
3.11.1 Family tracing and family reunification	
3.11.2 Return of child victims of trafficking	
3.11.3 Forced returns	
3.11.4 The politics of return	
3.12 Third country relocation	31
4. Conclusion	32
5. Recommendations	33
Appendix1 Stakeholder questionnaire	35

EXECUTIVE SUMMARY

Around one in five victims of trafficking in the UK are children under 18.¹ One of the recurring themes revealed by the stories that trafficked children tell Unicef UK is how difficult and frightening it is for them to deal with the uncertainty of what is going to happen to them in the future.

A durable solution is the long-term sustainable arrangements that we make for unaccompanied asylum seeking children, including those who have been trafficked. It means plans are in place, support is available, and children are helped throughout their childhood with a view to their future. It gives children stability, security, and a chance to heal and develop. A durable solution can also play a role in preventing re-trafficking.

Although positive legislative changes have been made to tackle trafficking in terms of protection and prosecution, especially through the Modern Slavery Act 2015 in England and Wales and comparable legislation in Northern Ireland and Scotland,² there is still no formal policy or procedure in place to make lasting arrangements for trafficked children that are in their best interests. This results in a significant gap in the protection provided to them.

BASIS OF THE RESEARCH

The UN Committee on the Rights of the Child states that the aim in addressing the future of an unaccompanied migrant child, including those who have been trafficked, is to identify a durable solution – one that meets all their protection needs, takes into account the child’s views, and leads to a longer term sustainable arrangement for the child rather than a short term resolution. There are three possible durable solutions: a return to the child’s country of origin; settlement and integration into the host country; or relocation to a third country. In all three cases, achieving a durable solution for a child who has been trafficked requires a robust child protection response.

In 2015, Unicef UK commissioned research to explore the implications of what we believe is a protection gap for trafficked (and potentially trafficked) children; and to describe what changes need to take place. Thirty key stakeholders who work with trafficked children were interviewed to identify where the system is working, and where it needs to improve to better protect children. Whilst our research was focused on immigration legislation and policy that applies to all four jurisdictions of the UK, when considering children in care and child protection legislation it focuses on England.

RESEARCH FINDINGS

The trafficking of children may be associated with transnational organised crime, global migration movements and immigration, yet ultimately it is about the abuse and exploitation of children and, first and foremost, should be a child protection matter. It damages children both in the short and long-term, destroying the childhood of many trafficking victims. Yet the current system and services too often fail to provide the support these children need.

Our research found that:

1) The local authority care system and the immigration system run on parallel lines, often undermining the child’s right to be protected

- Many of those who work with child victims of trafficking are not meeting even the most basic requirements and responses towards these children, and trafficked children are not considered children in need of protection. A child’s immigration status – and status as a migrant in general – often takes precedence over their status as a child victim of trafficking.

¹ National Crime Agency (2015) National Referral Mechanism Statistics – End of Year Summary 2014

² Modern Slavery Act 2015 (England and Wales); Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015; Human Trafficking and Exploitation Act (Scotland) 2015.

- Existing forms of protection and leave available are not appropriate for child victims of trafficking. The majority of unaccompanied children are given Unaccompanied Asylum Seeking Child (UASC) leave – a temporary form of leave granted for 30 months or until a child reaches the age of 17½, whichever is shorter. This undermines the very concept of a durable solution for each child.

2) Practitioners demonstrate low levels of understanding about trafficking and the need for independent support for child victims of trafficking

- Too many front line workers, including social workers, police, health workers and education staff do not understand the concept of trafficking, or recognise the indicators of trafficking in child victims. Some trafficked children are perceived as criminals rather than as victims of crime, which has far reaching consequences for them. The principle of the non-prosecution of trafficked children for offences committed as a direct consequence of being trafficked is still not well known and fully implemented. There is insufficient training on trafficking.
- The framework for considering whether a child has or has not been trafficked – the National Referral Mechanism (NRM) – is not currently fulfilling its purpose. Interviewees expressed real frustration at the lack of understanding of the trauma that some trafficked children have been through, how frightened they are and how this can affect their ability to give accurate, reliable, consistent evidence. A new model NRM is being piloted – we hope the changes will address these deficiencies.
- Independent advocates or guardians have an important role to play. An independent advocacy service for trafficked children is being trialled in England and Wales to ensure that the child’s best interests are protected. Independent guardians will assist, protect and support child victims of trafficking in Northern Ireland and Scotland.

3) Planning focuses on the short term with insufficient consideration about the child’s future and long term outcomes

- There is extensive local authority care planning but of variable quality. Even where the plans are of good quality and are based on an assessment of the child’s best interests, they are focused on the ‘day to day’ needs of the child rather than long term plans that provide the child with stability and a route to fulfil their potential.
- Child victims of trafficking are especially vulnerable at transition points, primarily the transition to adulthood at the age of 18. This is particularly significant for those children who have temporary forms of leave and must apply to extend their leave or appeal a decision. They can find themselves with little support to do so, and remain vulnerable to exploitation and re-victimisation.
- There are no monitoring systems in place to track outcomes for children once they leave care, for child victims of trafficking who are appeal rights exhausted and face deportation, or young people who have been returned to their country of origin. This makes it virtually impossible to review most cases in order to analyse long term outcomes and ultimately to assess whether plans have indeed been ‘durable’.

All stakeholders interviewed agreed that achieving a durable solution for trafficked children has to involve a range of actors and should entail a multi-agency approach. However, lead responsibility should rest with the agency responsible for the child’s overall welfare. In the UK, this would mean that local authority children’s services should take lead responsibility for delivering a durable solution for each child.

UNICEF UK RECOMMENDS THAT THE UK GOVERNMENT

1. Ensure that child trafficking is addressed as a child protection issue within a child protection framework

Local authorities are under a statutory duty to safeguard and promote the welfare of trafficked children, yet poor practice is impeding this. Too many of those working with these children wait for confirmation that the child has been trafficked before they assess their protection needs. This is not in the child’s best interests, and destabilises the care and support available to that child. We ask the Home Office and DfE to work with representative groups such as the College of Policing, Association of Directors of Children’s Services (ADCS) and the Local Government Association (LGA), as well as individual local authorities in England, to develop and deliver a comprehensive programme of training on child trafficking for the police, commissioners of children’s services, child protection social workers, care teams, leaving care teams, foster carers and residential care workers.

2. Fully implement the National Referral Mechanism (NRM) reforms in order to lead to a durable solution for trafficked children

The National Referral Mechanism is a framework for identifying victims of human trafficking. When a child is suspected of being trafficked, their case is referred to the NRM for consideration. The NRM is under reform,³ which should address shortcomings identified in this research. The Home Office must raise awareness and promote the new system to the front line staff who are most likely to make contact with a trafficked child; and ensure the panels making decisions about children’s cases are appropriately trained and supported. We want to see an efficient and reliable NRM in place that quickly recognises child victims of trafficking and temporarily regulates their status, immediately followed by the search for a durable solution for each child. The best interests of the child must be the leading principle used throughout the process, and should be explicitly recognised in the new NRM policy.

3. Make sure trafficked children are not punished for crimes they commit that are related to their trafficked status

It is a principle of international law that children cannot consent to being exploited. Prosecuting a trafficked child for crimes they have been forced to commit is a violation of their basic rights. Section 45 of the Modern Slavery Act 2015 provides for a defence for children who have committed an offence as a direct result of their being a victim of slavery, trafficking or exploitation. However, trafficked children will still have to pass a ‘reasonable person test’ in order to access the defence: this requires an adult juror to decide whether a similar child in similar circumstances would have acted in the same way. We want to see all UK trafficking legislation incorporate a non-prosecution principle to protect children from inappropriate detention, prosecution and punishment without first having to pass this test. The Crown Prosecution Service (CPS) will be working to update legal guidance on human trafficking – this must support the non-prosecution principle for children, and be accompanied by Continuing Professional Development (CPD) training for legal practitioners and the police.

4. Establish a formal Best Interests Determination (BID) process

When a child is identified as having been trafficked through the NRM, it is time to find out which durable solution would be best for that child. A multi-agency Best Interests Determination (BID) process, undertaken within a child protection framework and that takes into account the views of all of those working with the child, the child’s advocate/guardian and the child him or herself, is the key assessment tool for determining this. We recommend that the government set up a BID process that can operate using existing mechanisms: for example, local Multi-Agency Safeguarding Hubs (MASH), if they are given an expanded role that includes specific child protection responsibilities for trafficked children.

³ including the creation of Anti Slavery safeguarding leads at local authority level; streamlining the referral process for potential victims of trafficking; and setting up multi-disciplinary panels to decide on cases.

5. Ensure children’s advocates and guardians are involved in durable solution decisions

Independent children’s advocates (in England and Wales), and children’s guardians (in Northern Ireland and Scotland) provide protection and support for trafficked children, and fulfil a preventive and supportive role for those who are at risk of being re-trafficked. They help trafficked children realise the full range of their rights, and guide them through the social care, immigration and criminal justice systems. The services are relatively new – a pilot of the independent child advocates service ends this year, with some uncertainty over whether or not it will continue. We want to see children’s advocates and guardians accompanying trafficked children through the entire decision-making process, with the independent advocacy service established in Home Office regulations. Over the longer term, we want to see advocates or guardians appointed for all separated migrant children.

6. Review forms of leave available for child victims of trafficking

Planning for a durable solution is not possible until a child’s immigration status has been regularised. Currently, Refugee Status and Humanitarian Protection are the only forms of leave available to trafficked children that facilitate a durable solution. However, the majority of unaccompanied asylum-seeking children are granted UASC, or temporary, leave which finishes when the child reaches 17½, and prevents the local authority from making any long-term plans with or for the child. We ask the Home Office to review and revise the current forms of leave and ensure that an additional form of leave is available to those children who are formally recognised as child victims of trafficking through the NRM, and for whom a BID establishes that it is in their best interests to remain in the UK. Under these circumstances, we recommend that they are given indefinite leave to remain.

7. Invest in research to find out what happens to child victims of trafficking

Despite the government’s increased focus on modern slavery, trafficking and exploitation, there are still significant research gaps that make it difficult to know: who and how many children we may be failing to identify and support; whether those who are identified are able to access the full range of their rights; and what happens to them when they become adults – in other words, whether a durable solution is being found for these children. We ask the DfE to review how well the existing statutory guidance on UASC and trafficked children is being used by local authorities. We urge the Home Office to collect and publish data on a range of areas: for example, what immigration status has been given to child victims of trafficking; how many and in what circumstances children are returned to their country of origin or relocated to a third country; and how many children are reunited with their families.

CONCLUSION

A durable solution is more than just a matter of immigration status: it requires a multi-agency approach involving all relevant organisations, and above all requires a child protection response.

The establishment of the Global Partnership to End Violence Against Children is an opportunity for all levels of government in the UK to prioritise child protection and work together with partners to find solutions for tackling violence, including child trafficking. At local level, this would include social care, health, education and the police, but with local authority children’s services in the lead. At national level, both the Home Office and the Department for Education (DfE) (in England) have key roles to play: the Home Office in relation to the operation of the NRM, the appropriateness of the different categories of immigration status, and the immigration decision-making process itself; and the DfE in relation to the framework for local authority permanence planning (leading to a durable solution) and children in care/child protection service provision.

1. BACKGROUND AND METHODOLOGY

One of the recurring themes revealed by the stories that trafficked children tell Unicef UK is how difficult and frightening it is for them to deal with the uncertainty of what is going to happen to them in the future. Although positive legislative changes have been made in England and Wales, Northern Ireland and Scotland⁴ that will tackle trafficking in terms of protection as well as prosecution, there is no formal policy or procedure in place to make lasting arrangements for trafficked children that are in their best interests. This results in a significant gap in the protection provided to them.

The aim of this research is twofold: to explore the implications of this protection gap for trafficked (and potentially trafficked) children; and to describe what changes need to take place. A theme of this report is that achieving durable solutions for children who have been trafficked requires a robust child protection response.

The trafficking of adults and children takes place across international borders and within national borders. Whilst acknowledging the existence of ‘internal’ trafficking within the UK, the scope of this research is limited to child victims of trafficking who have been trafficked into the UK from abroad.

This research identified 30 key stakeholders⁵ who work with children who have been trafficked, either directly or through roles where they hold a policy brief. These stakeholders were interviewed against an agreed set of questions, although the interviews were also designed to facilitate discussion and allow for a broad input from participants. It was not part of this brief to engage directly with children who had experiences of trafficking.

The research was focused on immigration legislation, policy and practice applied across all four countries of the UK. However, there is separate legislation and guidance for children in care, care leavers, care planning and permanence planning in England, Northern Ireland, Wales and Scotland. This research focuses on children in care and child protection law, policy and practice in England.

As outlined in General Comment 6 from the Committee on the Rights of the Child, a durable solution for a separated child includes one of the following long term outcomes: return and reintegration, local integration or a third country solution (that is relocation to a third country when it is not possible for the child to return to their country of origin or remain in the host country).⁶ This research examines the extent to which these outcomes are explored and implemented according to international guidance and the Unicef definition of a durable solution for child victims of trafficking in the UK (see below).

⁴ Modern Slavery Act 2015 (England and Wales); Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015; Human Trafficking and Exploitation Act (Scotland) 2015

⁵ 3 social workers and other local government staff; 8 lawyers; 1 academic; 1 independent consultant; 1 MP; 1 government official; 15 third sector workers from a range of agencies.

⁶ Committee on the Rights of the Child (2005) Treatment of unaccompanied and separated children outside their country of origin, para.79.

2. INTERNATIONAL AND UK DOMESTIC LAW AND GUIDELINES

2.1 Trafficking

According to the UN Palermo Protocol⁷ ‘trafficking in persons’ means:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The UK’s Modern Slavery Act 2015, effective as of July 2015, defines human trafficking as arranging or facilitating the travel of another person with a view to exploiting them. ‘Arranging or facilitating travel’ may be by recruiting, transporting or transferring, harbouring or receiving, or transferring/exchanging control over the trafficking victim. It is irrelevant whether the person consents to the travel.

Unicef’s *Guidelines on the Protection of Child Victims of Trafficking*⁸ describe child trafficking as:

the act of recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation regardless of the use of illicit means, either within or outside a country. All different forms of exploitation shall be considered within the definition, including: exploitation of prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery or servitude, the removal of organs, use of children associated with armed groups or forces, begging, illegal activities, sport and related activities, illicit adoption, early marriage or any other form of exploitation.

Under these guidelines, the consent of a child victim of trafficking to the intended exploitation is irrelevant, even if none of the following illicit means have been used: force or other forms of coercion, abduction, fraud, deception, the abuse of power or of a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person. A child victim of trafficking is any person trafficked under the age of 18.

The Council of Europe Convention on Action against Trafficking in Human Beings⁹ (the Trafficking Convention) is a fundamental convention, setting out and protecting the rights of trafficking victims.

Article 16 of the Directive of the European Parliament on preventing and combating trafficking in human beings and protecting its victims¹⁰ (the Anti-trafficking Directive) notes that child victims of trafficking should receive specific support and that Member States should seek a durable solution for the child based on an individual assessment of their best interests.

2.2 Durable solutions

International law, guidelines and practice on durable solutions for unaccompanied and separated children outside their country of origin does not have a single source but draws generally on international human and children’s rights instruments and humanitarian law, in particular the UN Convention on the Rights of the Child, the Committee on the Rights of the Child General Comment 6,¹¹ the Convention and Protocol relating to the Status of Refugees,¹² UNHCR guidance, EU regional law, and also the laws and practices of individual states.

General Comment 6 states that the ultimate aim in addressing the future of unaccompanied or separated children is to identify a durable solution that addresses all their protection needs, takes into account the child’s views and, wherever possible, overcomes the situation of a child being unaccompanied or separated. Efforts to find durable solutions for unaccompanied or separated children should be initiated and implemented without undue delay: where possible, immediately following an assessment that indicates a child is unaccompanied or separated. Following a rights-based approach, the search for a durable solution commences with a Best Interests Determination (BID) and analysis of the possibility of family reunification. A BID describes the formal process designed to determine a child’s best interests for particularly important decisions affecting the child. It should facilitate the participation of the child in the decision-making process, involve decision-makers with relevant areas of expertise, and balance all relevant factors in order to assess the best option for the child.¹³

The Secretary of State [Home Secretary] has a statutory obligation under Section 55 of the Borders, Citizenship and Immigration Act 2009 to safeguard and promote the welfare of all children who are in the UK, regardless of their immigration status. Despite this, and the provisions of the Modern Slavery Act, there remain significant gaps in achieving durable solutions for child victims of trafficking who are subject to immigration control. There is no specific statutory guidance in place for implementing a durable solution and the term itself is not widely understood or used in the UK.

This distinction in the child’s immigration status is significant, because Department for Education (DfE) practice guidelines¹⁴ and protocols do exist for durable or *permanence planning* for children who are in state care in England (and similar guidelines exist in the other countries of the UK).¹⁵ When considering permanence planning for children in care, it is important to consider a number of factors including legal conditions, stability, material conditions and emotional attachment, which can give a child a feeling of security, continuity, commitment and identity. However, temporary or uncertain immigration status appears to override a social worker’s ability to make and implement plans in the long term, as will be illustrated through the research findings and case studies below.

⁷ United Nations (2000) Protocol to Prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime.

⁸ Unicef (2006) Guidelines on the Protection of Child Victims of Trafficking

⁹ Council of Europe (2005) Convention on Action against Trafficking in Human Beings

¹⁰ European Parliament and Council (2011) Directive 2011/36/EU: Preventing and combating trafficking in human beings and protecting its victims.

¹¹ UN Committee on the Rights of the Child (2005) General Comment 6 on the Treatment of Unaccompanied and Separated Children Outside their Country of Origin, para.79.

¹² UNHCR (1951 and 1967) Convention and Protocol relating to the Status of Refugees.

¹³ UNHCR Guidelines on Determining the Best Interests of the Child, UNHCR 2008.

¹⁴ Department for Education (DfE) (2010) Children Act 1989, guidance and regulations volume 2; care planning, placement and case review.

¹⁵ For Northern Ireland, guidance issued under the Children (Northern Ireland) Order 1995; for Scotland, guidance and regulations issued under the Children Act (Scotland) 1995 and subsequent legislation, with new care planning and corporate parenting responsibilities set out in the Children and Young People (Scotland) Act 2014; for Wales, guidance and regulations issued under the Children Act 1989 and Children (Leaving Care) Act 2000, until April 2016 when new measures in the Social Services and Wellbeing (Wales) Act 2014 come into force.

3. RESEARCH FINDINGS

The findings that follow in this section are drawn from the interviews that were undertaken with a range of stakeholders.

The absence of any monitoring systems to track outcomes for former looked-after children once they leave care, outcomes for child victims of trafficking whose appeal rights are exhausted and face removal, and outcomes for those young people who have been returned to their country of origin as children, or removed when they have turned 18, means that it is virtually impossible to review most cases in order to analyse long term outcomes. As such, case studies have been included to provide a snapshot of children's lives now, or up until the point at which contact with a practitioner ceased.

3.1 Durable solutions planning in practice

A durable solution comprises the long-term sustainable arrangements for child victims of trafficking as opposed to short-term solutions (such as reflection period, emergency assistance and temporary residence permits). More generally, in the international context, the term takes three forms: local integration, return to the country or place of origin, or third country relocation. Durable solutions also play a role in preventing re-trafficking. A durable solution will not require the victim to participate in criminal proceedings against their traffickers, and will be tailored to the victim's circumstances in the UK and their country of origin. Above all, a durable solution will ensure that the unaccompanied or separated child is able to develop into adulthood in an environment that will meet their needs as well as fulfil their rights as defined by the UN Convention on the Rights of the Child, and will not put the child at risk of persecution or harm. The durable solution will have a fundamental impact on the child, so must be informed by a Best Interests Determination (BID), which upholds the strictest procedural safeguards.

All of those interviewed were aware of the term durable solution; although none thought that proper durable solution planning is currently taking place for child victims of trafficking. Many went so far as to say that even the most basic requirements and responses towards child victims of trafficking are not being met, and that these gaps need to be addressed before considering gaps in long-term planning. A view emerged that the term 'durable solution' wasn't widely used within the UK and that terms such as 'permanence planning' or 'developing care plans' were more generally used and understood. There was a perception that 'durable solution' was a term developed and used more by inter-governmental agencies than the statutory bodies working directly in the UK with trafficked children.

Interviewees overwhelmingly indicated that there is currently a failure to provide children who have been victims of trafficking with a durable solution. There is extensive local authority care planning but of variable quality. Even where the plans are of good quality and are based on an assessment of the child's best interests, they are focused on the short term and consider the 'day to day' needs of the child rather than long-term plans that provide the child with stability and a route to fulfil their potential.

Interviewees identified a number of barriers that impede practitioners' ability to identify, implement and follow through any durable solutions planning which is long term and sustainable, which are illustrated in case studies.

3.1.1 Identification of child victims of trafficking

A child who has been trafficked may be identified by a range of agencies and services, including UK Visas and Immigration (UKVI), the police, local authorities, non-governmental organisations, and legal representatives. Where there is a suspicion that a child has been trafficked they should be referred to the relevant local authority for an assessment of their needs, and also referred to the National Referral Mechanism (NRM).

Such cases are not always straightforward, and there can be delays where the stated age of the child is disputed, if a child has been detained, if they have committed a criminal offence, or as a result of a general lack of awareness both of the indicators of trafficking and the role of the NRM.

CASE SNAPSHOT 1

A 16-year-old Vietnamese boy was arrested for being involved in cannabis production. The local authority was contacted at the time of his arrest and undertook an assessment of his age. They raised concerns about indicators of human trafficking and he was referred to the NRM. He was awaiting a conclusive decision about his status as a victim of trafficking at the time that he was sentenced for his offence. He had pleaded guilty on the advice of his lawyer and was given a custodial sentence, even though the judge recognised that he had been acting under considerable duress. Shortly before his release from custody his legal representative was asked to provide him with advice. He told them that he was from a poor rural background and had been sold into debt bondage at age 15. He was promised work in a restaurant abroad and was charged US\$20,000 to facilitate this. He worked in exploitative conditions at a restaurant in Germany before being moved to the UK where he was forced to grow cannabis.

3.1.2 The National Referral Mechanism

This research was written while the National Referral Mechanism (NRM) was working to its original remit. It explores outcomes for those children who have been formally recognised as victims of trafficking through the NRM process, and who therefore in principle have access to the various forms of support and mechanisms that should enable a durable decision to be made about their future.

When children suspected of having been trafficked are identified, they should be referred to the NRM. The development of the NRM followed the ratification by the UK of the Council of Europe Convention on Action against Trafficking in Human Beings on 17 December 2008 and the NRM became operational on 1 April 2009.

The NRM is a framework for identifying victims of human trafficking and for ensuring that they receive appropriate protection and support. It makes decisions about whether someone has been a victim of trafficking in two categories: (positive) *reasonable grounds* and (positive) *conclusive grounds*. Decision makers are trained and their threshold for reasonable grounds is based on a belief derived from the information available that the individual is a potential victim of trafficking or modern slavery. A *conclusive grounds* decision uses the higher 'balance of probability' threshold to decide the individual is a victim of human trafficking or modern slavery. There has been significant criticism of the design and conceptualisation of the NRM process and, following an independent review in 2014, a new way of operating is being piloted. These reforms mean that, where a child is the subject of a referral to the NRM, consent is not required for the referral and therefore the process should be slightly less onerous for 'first responders' – namely those agencies and organisations including children's services and the police which have grounds for concern that a child may be a victim of trafficking.

Concerns regarding the NRM include the fact that children aren't being identified as potential victims of trafficking, and that practitioners who are meant to be first responders haven't heard about the mechanism or their duty to refer. Those interviewed felt that the NRM offered little protection to children who could still be returned to their country of origin without any meaningful assessment of the risks of re-trafficking, even in instances where there was a positive conclusive decision. Overall, the whole mechanism was seen to delay decision-making for children and, as such, contribute to their levels of stress and anxiety. One respondent commented that:

"The NRM is a mechanism to catch criminals, not protect children".¹⁶
"A positive conclusive grounds decision doesn't automatically mean they have any leave to remain, they still have to apply so have no right to reside in the UK."¹⁷

¹⁶ NGO worker

¹⁷ NGO worker

A positive conclusive grounds decision provides the child with short-term permission to remain. Article 14 of the Trafficking Convention states:

‘competent authorities shall issue a renewable residence permit if they consider that the victim’s stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings or if their stay is necessary owing to their personal situation.’

As this residency is just a short term measure, the conclusive grounds decision triggers a consideration of what further protection the child is entitled to and can form the basis for an application for protection under the Refugee Convention.

Many of those interviewed expressed concerns that the two processes were being carried out simultaneously, and that decisions on asylum claims are being made at the same time and by the same people as those making NRM decisions. This means that the information gleaned from a conclusive grounds decision cannot be fed into the asylum claim. It also means that children are unable to take advantage of the benefits of the 45-day recovery and reflection period meant to be available to NRM referrals,¹⁸ and this can have a significant impact on the quality of the evidence presented in an asylum application. The purpose of the reflection period is to allow time for the child to begin to recover from their experience and the trauma of their ordeal, and to have time to think about what they want to do next – whether it’s to return home, be reunited with family, or cooperate with a police investigation.

Further criticisms were levelled at the decision-making processes within the NRM. Legal representatives described how they were finding that, despite the presence of a specialist team, immigration officers who had not received adequate training were carrying out many assessments. This has resulted in too much emphasis on the detail of the case in the first stage reasonable grounds decision, which places a huge burden on a child or young person to provide evidence at this very early stage, without being given the 45-day period in which to gather the evidence for the conclusive grounds decision.

Interviewees expressed real frustration at the lack of understanding of the trauma that some of these children have suffered, how frightened they are and how they will lie or say what they think is expected of them as a consequence.¹⁹ Despite guidance that highlights the pressures that child victims of trafficking are under and the ways in which this may lead to inconsistencies in the evidence they give, legal representatives report cases where UKVI has used these inconsistencies as reasons not to grant a positive conclusive grounds decision to the detriment of the child. A lack of competent interpreters also feeds into this problem.²⁰ It was suggested that child protection experts (or a multi-disciplinary board) should make the NRM decision, as the key issue being decided on – whether or not a child has been trafficked – is one of child protection, not an immigration issue.²¹

The standard of proof required by the NRM is higher (balance of probability) than that required by the courts hearing an asylum application (a serious possibility). The immigration solicitors whom we spoke to said that a positive NRM decision helps with credibility in the asylum determination process, particularly at appeal stage.²² However, the consequences of getting a negative decision in the NRM process are significant, as it can both limit access to specialist services and affect the decisions on the child’s asylum application, although courts are not bound by the NRM decision. The impact of a negative decision can be momentous for those children who have been trafficked for criminal activity, for example cannabis production.

It was the experience of those interviewed that a positive conclusive grounds decision is not always effective in enabling children to access the specialist support they need: access to these services is dependent upon geographical location and the support of social workers or other supportive adults.

18 Home Office (2015), Victims of modern slavery: competent authority guidance. Version 2

19 NGO worker

20 Solicitor

21 Under the new NRM proposals, there will be a case management unit in the Home Office (but not in UKVI) that will collect information about a trafficked child, and then regional and virtual multi-disciplinary panels will take the conclusive grounds decision. However, where a child does not have immigration status, UKVI will be on the panel and will be responsible for the child’s immigration status so there will continue to be a failure to separate out the two issues, trafficking and immigration status.

22 Solicitor

Free legal aid is only available if the child submits an asylum application or where a reasonable grounds decision is positive.

“Safeguarding responses by local authorities don’t respond to a conclusive grounds decision.”²³

The NRM is not directly linked to durable solution responses for those children who have a conclusive grounds decision. It does not trigger a Best Interests Determination or a positive outcome to an asylum application, and neither does it trigger a process in which long term care plans and immigration responses are considered together. A child victim of trafficking will only be granted asylum if they can demonstrate that they will face persecution on return and that there is not a functioning criminal justice system that can protect them in their country of origin. Not surprisingly this is often difficult to prove.

3.2 Responsibility for deciding durable solutions

Both the Home Office and the DfE (in England) were identified as having key roles to play in determining durable solutions outcomes, with the DfE taking the lead in permanence planning (durable solutions). However, this wasn’t seen as exclusively the domain of these two agencies as the decision and determination of best interests goes beyond the care system, touching upon immigration status and access to justice among other matters.

“The local authority is charged with responsibility for the children, but planning for a durable solution outcome can’t be exclusively their responsibility. The decisions and planning needed go beyond care and protection and include issues such as access to justice and immigration status. The duty to provide a durable solution outcome is a duty on the State, therefore it is government-wide.”²⁴

“There needs to be clarity over who is making the durable solution decisions, there needs to be someone responsible.”²⁵

There were concerns that, at present, responses to child trafficking are almost exclusively led by the Home Office rather than by those responsible for the welfare of children, that is local authority children’s services. This can mean that a child’s identity as a migrant and/or an asylum seeker overrides their identity as a victim of trafficking, and indeed fails to see them first and foremost as a child.

“Very destructive to see return at 18 as a durable solution. I think the Home Office recognise this deep down but it doesn’t fit with what they need to be thinking. I wouldn’t necessarily criticise them for this, they aren’t social care and they aren’t meant to have that agenda. Problem is that they want to manage and control UASC. The Department for Education have washed their hands of the issue and therefore it is in the Home Office basket. It’s not what they do or what they understand.”²⁶

23 NGO worker

24 NGO worker

25 NGO Director

26 NGO Director

3.3 Integration in host country

3.3.1 Seeking Leave to Remain in the UK

When the appropriate authorities identify suspected child victims of trafficking, they are usually referred to legal representatives in order to make a claim to regularise their immigration status. Under the Trafficking Convention, victims are entitled to a residence permit if their stay in the UK is necessary because of their personal circumstances and/or because they are cooperating with criminal proceedings against their traffickers.

As there is an absence of specific protection measures for child victims of trafficking, it is normal practice for legal representatives to recommend that these children apply for humanitarian protection or asylum under the 1951 Refugee Convention. Although the Convention does not refer explicitly to victims of human trafficking, it does provide for protection from persecution for a 'member of a particular social group'. In certain circumstances, a victim of human trafficking can meet the criteria of being a member of a particular social group.

A number of those interviewed suggested that existing forms of protection and leave available are not appropriate for child victims of trafficking. Whilst child victims of trafficking may not be able to qualify for protection from persecution under the Refugee Convention, their protection needs are still great. Current decision-making processes and legal protection do not recognise these specific risks.

*"With so many of these children ... there is strong evidence that they were trafficked, evidence of having been targeted or groomed ... it seems crazy to return them ... they are so vulnerable."*²⁷

The findings of this research suggest that the majority of child victims of trafficking want to apply for asylum and to stay in the UK, thus the durable solution being sought by them is integration into the UK.

3.3.2 Unaccompanied asylum seeking children (UASC) leave

There are no statistics or data available to illustrate outcomes of applications for child victims of trafficking. However Home Office statistics for unaccompanied asylum seeking children (which will include child victims of trafficking) show that between 2006 and 2014, only 25% of children received refugee status and 57% received unaccompanied asylum seeking children (UASC) leave. In 2014, 41% of unaccompanied children received refugee status and 42% received UASC leave.²⁸

Evidence from this research suggests that significant numbers of child victims of trafficking are being granted UASC leave, which is a temporary form of leave granted until a child reaches the age of 17½ or for 30 months, whichever is shorter. UASC leave is granted when a case is not seen to meet the criteria within the Refugee Convention for recognising the applicant as a refugee, or for satisfying the grounds for humanitarian protection, and when there are no 'adequate reception arrangements' in place to enable that child to be returned to their country of origin.

*"Unaccompanied asylum seeking children leave isn't a durable solution outcome – at no point in the decision making process to grant a negative decision to an asylum application, is a child's best interests considered: no exploration of return, etc."*²⁹

This outcome does not represent a durable solution for a child, as there is no certainty over their future beyond the age of 17½. At no stage in the asylum decision-making process are the alternative options that are available for the child explored, including family reunification, return or third country settlement.

27 Solicitor
28 Home Office Immigration Statistics, Initial decisions on asylum applications from Unaccompanied Asylum Seeking Children, excluding dependents, by sex and age at initial decision (2006-2014)
29 NGO worker

3.3.3 The decision-making process and its impact on children

Project workers were able to describe cases of child victims of trafficking who were brought to the UK when they were 12 or 13 years old and presented as unaccompanied asylum seeking children. Often the history of trafficking doesn't come to light until later, but these children are being refused further leave to remain.³⁰

In light of the high numbers of children being refused asylum, poor decision-making procedures are of serious concern, illustrated by the number of cases that are overturned on appeal. Concerns were raised by our interviewees about: the complexity of the immigration determination process; the failure to apply child-friendly procedures that make the process very hard for children to navigate; and a lack of real understanding of how a child victim's experiences of being trafficked and exploited will shape and colour their testimonies and stories. Those we spoke to felt one of the reasons for poor initial decision-making was the lack of child-friendly procedures. Interviewees, in particular legal representatives, expressed concern that inappropriate decisions are being made on children's asylum applications on 'credibility grounds', and that UKVI are not taking into account the child's age, circumstances, maturity and background.

Interviewees also commented about the apparent lack of understanding of the trauma that children have experienced and the pressure they are feeling. Many children face a succession of lengthy interviews, with a broad spectrum of professionals including social workers, legal representatives, project workers, and immigration officials. To a frightened and confused child who has just come into contact with these authorities, they are all the same and the child does not trust one above the other. Some of the professionals working with these children explained how exhausting being interviewed can be for a child, and that they don't want to have to do any more talking: they may adapt a story, leaving out a key detail, in order to finish the ordeal of being interviewed as quickly as possible and do not have any understanding of the implications that this can have for their case.³¹

*"The processes are complex and drawn out. Case workers have training so that they should take a child-friendly approach, but it's not always happening in interviews. We've had young people who have been forced to give information, or requesting a break but this request being refused. Much more needs to be done to make decision makers and those in contact with this group of children understand their needs and vulnerability."*³²

One interviewee stated that a child's credibility is also affected by the timing of their disclosure that they were trafficked. If they have been in the UK for a year or so and haven't mentioned their exploitation, UKVI are more suspicious of their claim.

Very little is known about the criminal networks that control and organise the trafficking 'industry'. Typically, children rarely disclose information about the circumstances in which they came to be trafficked, their country of origin or their family. For these children, and those who have been trafficked for labour or private fostering, asylum is often not a realistic solution and they might make an application for humanitarian protection. However one respondent commented that this is almost always granted for a standard period of five years, and there is no security for a young person about what will happen to them after this five-year period expires.³³

3.3.4 Delays in the decision-making process

Another barrier to being able to plan for a child's future is the protracted nature of decision-making in immigration cases. Initial decisions are often delayed and the decision might be appealed. In some instances it can take over a year for a child to hear the outcome of their application. Those who are granted short periods of leave, or discretionary leave will have to apply to extend this at a later date. One solicitor described how almost all of her clients have ongoing proceedings, and only one has been granted indefinite leave to remain.³⁴

30 NGO worker
31 NGO worker
32 Project worker
33 Solicitor
34 Solicitor

Throughout these complex legal proceedings, the onus is on the child to fill in forms and apply for extensions of leave, often with no support to do so. As they approach their 18th birthday, the uncertainty over their future can put great pressure on young people, often re-triggering trauma. This lack of certainty in terms of status from the outset, and the protracted legal processes that children must go through in order to appeal or extend limited leave to remain are, according to project workers, often the drivers behind young people going underground and disappearing, often re-initiating contact with their traffickers, which is clearly not a durable solution in the child's best interests.

3.4 Legal representatives, independent advocates and other support

The legal representatives interviewed for this research all identified the support of specialists or support workers as having a significant impact on the outcome of an asylum application. Clearly, those child victims of trafficking who have accessed and have support from a specialist service such as the Poppy Project, Barnardo's, the Scottish Guardianship Service or the Police are much more likely to receive a five-year period of leave to remain. The fact that young people have been supported to give evidence means that the information they present is more structured.³⁵ Other types of support that helped include social workers writing letters of support or references from tutors. Although support of this type does not necessarily affect the detail of the case, it makes the case seem more credible.

Outcomes for children are of course also significantly influenced by the quality of legal advice and representation. There are concerns about legal representatives who don't know enough about child trafficking and are giving their child clients the wrong advice, for example to plead guilty to criminal offences, which has life-long implications for the child.³⁶ Some children are being advised to claim asylum without mentioning their trafficking experience because the solicitor is unaware of the long term impact this can have on the child's case. Poor quality representation can see children going for interviews without any guidance beforehand: for example, some children have attended their initial screening interview without even realising its purpose.³⁷

Signposting to good quality solicitors is very important.

"We used to just give the children a list of legal representatives for them to contact, but now we are trying to help them more and we refer them to Coram or the Children's Panel for recommendations - it has been more effective in finding compassionate solicitors."³⁸

Of further concern are the situations of those children whose legal representatives are chosen due to commonalities of language but are not solicitors. These 'legal representatives' often give out harmful legal advice. One interviewee described the case of a Vietnamese girl who had been taking legal advice from a member of the Vietnamese community. After two years of this, she was persuaded to get some other advice and found out that her initial representative had submitted the wrong paperwork. It took a lot of work to sort out the mistakes that had been made.

3.5 Local authority support and care for trafficked children

When a child victim of trafficking is identified, they will be referred to the local authority for an assessment of need and a care plan should be drawn up to address these needs. Care plans should facilitate permanence planning, and planning for a durable future that enables the young person to grow into an independent and resilient adult. However, the experience of those consulted in this research points overwhelmingly to poor implementation in practice.

Stakeholders described a lack of specialist services and inadequate support for young people hitting key transition points in their lives, including turning 18 or 21 years of age and leaving care. It was suggested

that this is due to a number of factors including: poor levels of knowledge and training; a lack of resources and funding; and the sheer numbers of cases of unaccompanied children being supported in certain local authorities. Most interviewees expressed concerns that there are still social workers who don't understand the concept of trafficking, or recognise indicators of trafficking in child victims. Interviewees suggested that too many social workers haven't heard of the NRM, and don't know how it works or what their duties are, and that this is also the case for the police, health workers and teachers. Some trafficked children are still perceived as criminals rather than as victims of crime, and this can have far reaching consequences on the kinds of services they receive.³⁹

Project workers described how, in their experience, local authorities without specialist asylum teams (which is the norm) provide a very limited safeguarding response. One social worker described how the specialist teams have been disbanded and staff have dispersed, resulting in expert knowledge being lost or diluted. At the same time, training on issues such as child trafficking hasn't been rolled out to other key teams who are often the first point of contact with victims, including youth offending teams, intake and assessment teams and multi-agency safeguarding hubs. She described how workers in these teams have almost no awareness of trafficking issues so that, for example, a Vietnamese boy found working in a cannabis production house is seen by social workers as a child who is here to work, or a criminal, rather than as a potential victim of trafficking.⁴⁰

A lack of understanding of the complexities of trafficking is affecting social workers' interpretations of the stories that they hear. Examples given include social workers failing to question false identify documents, leading to the presumption that a child is lying about their age. If a child's age is disputed and they are considered an adult, they lose access to the support and protection provided by local authority children's services.⁴¹ Other problems include understanding the types of exploitation facing trafficked children beyond sexual exploitation: for example, trafficking for the purposes of forced marriage or domestic servitude is not always understood or recognised. In some instances, rather than this situation being recognised as abusive or exploitative, it is seen as a cultural or 'family' issue where the child is being disruptive and the family is taking steps to control them. In cases like this, social workers' views are coloured by cultural elements and by assumptions that a child is 'unruly'.⁴²

CASE SNAPSHOT 2

A girl from Nigeria who was trafficked for sexual exploitation was using a genuine passport belonging to another person. Although she was 30 years old according to the passport, she was in fact 16. The local authority challenged her age on the basis of her documentation, showing a lack of understanding of the trafficking context and the reasons why she might be travelling with false documentation. They failed to pick up on any indicators that pointed to her having been trafficked and exploited.

It was only when the police became involved in investigating the case of the trafficker involved that they finally accepted that the young person's documentation was false.

Anecdotal evidence suggests that, despite the development of Local Safeguarding Children Board (LSCB) trafficking guidance, front line workers and managers are often unaware of their statutory obligations to provide specialist support and keep children safe from going missing or being re-trafficked.⁴³ Practitioners we spoke to called for more detailed training for all social workers, especially given their role as first responders within the NRM process. Under the new NRM pilot, there will be a slavery safeguarding lead in each local authority, however it was suggested that this will only add to the duties of already over-burdened social workers who will not get any additional support, training or funding to carry out this role. Some interviewees recommended that there needs to be a multi-agency approach to safeguarding trafficked children, following the example of Multi-agency Safeguarding Hubs (MASH). These MASH teams

35 NGO worker
36 NGO worker
37 Project worker
38 Service manager

39 Solicitor
40 Deputy Team Manager
41 Solicitor
42 Solicitor
43 Solicitor

comprise staff from children's services, education services, health care, the police and probation services, and have been developed in a number of local authorities in order to increase dialogue between agencies. The focus of these teams is on child sexual exploitation, missing children and domestic violence. It was suggested that much more should be done to increase the knowledge and awareness of child trafficking within these hubs.

There are significant concerns that the support being provided by local authorities is based on child victims' day to day needs rather than making sure children have the tools they need to thrive, function and be safe (that is, reach a durable solution).⁴⁴ It was suggested that only a handful of local authorities focus on providing the life skills and education that vulnerable children require to *'put them on the right path for adult life.'* While this lack of planning can in part be attributed to uncertainty over how long a child will be in the UK, there is also evidence that it results from attitudes, priorities and resourcing.

*"They are not thinking about durable solutions but about minimum requirements. The support that child victims of trafficking receive is dependent upon how social workers interpret the guidance, and other pressures that they are under. I don't think that durable solutions are in the minds of practitioners, they are more bound by child protection procedures, thinking more about the immediate and current protection needs."*⁴⁵

A local authority deputy team manager described how many managers are prioritising cost savings over service provision, and how they will try to avoid accommodating an age disputed child (seeing this as resource saving) rather than fulfilling their duty to support and accommodate a child in need. She described the case of a child who was a suspected victim of trafficking but whose age was disputed. The child was then put into adult National Asylum Support Service (NASS) accommodation. An NGO worker picked up her case and wrote to the local authority requesting an age and trafficking assessment. However, the child was kept in NASS accommodation throughout the assessment process, which subsequently found her to be a trafficked child.

*"At service manager level it's not being prioritised, especially around accommodation. Lots of suspected victims of trafficking are age disputed and they are not being looked after – you really have to put the statutory guidance under some manager's noses to get them to accommodate."*⁴⁶

Examples were given of what interviewees referred to as 'social worker indifference', and how a local authority failure to act as a 'corporate parent' to the trafficked child can have negative repercussions on that child's future. Poor practice included: local authorities failing to take action on the child's behalf to find a better solicitor when the quality of their legal representation was a matter of concern; or refusing to provide care for child victims of trafficking, claiming that they can't confirm that the young person is resident in their authority, and therefore should be looked after by a different authority.⁴⁷

One legal adviser said that, in her experience, *"when young people reach the end of the line and their appeal rights are exhausted, local authorities and social workers don't really care."*⁴⁸ A local authority deputy team manager confirmed that she had seen differential treatment between citizen and migrant children, and prejudice and misunderstanding of the needs of this group, their vulnerabilities and the reasons they are in the UK. This group of children are often seen as more resilient, illegally resident and therefore less deserving of services.

44 Solicitor
45 Project worker
46 Deputy Team Manager
47 Project worker
48 Solicitor

CASE SNAPSHOT 3

A nine-year-old girl was initially assessed and treated as a child in need. As a teenager, she presented challenging behaviour and became a very difficult young person for the local authority to support. It was the view of one of the interviewees who worked with this girl that, as soon as her behaviour changed, she was seen as a 'migrant' child rather than a vulnerable child. Despite having been in the country since she was young, she wasn't sent to school but to ESOL classes instead, missing out on a formal education.

It was suggested that the 'one size fits all' approach of care plans wasn't helpful for practitioners working with child victims of trafficking, and that much more guidance was needed both for the social workers who devise care plans, and the managers who review them. One perceived best practice approach that was developed to assist with planning for unaccompanied asylum seeking children who face uncertainty over the future, is 'triple planning'. This form of pathway planning is meant to assist social workers in planning for a number of possible outcomes, and comprises three strands; a transitional plan during the period of uncertainty when the child who is a care leaver is in the UK without permanent immigration status; a longer-term perspective plan should the child who is leaving care be granted long-term permission to stay in the UK (for example, through the grant of Refugee Status); or return to their country of origin at any appropriate point or at the end of the immigration consideration process, should that be necessary because the child decides to leave the UK or is required to do so. The findings of this research suggest that this approach to planning for children with uncertain futures is uncommon. Practitioners described how even when the child has leave, little is done to plan ahead to the time when that leave will expire.

*"Triple planning ... It's done for things like adoption but for unaccompanied asylum seeking children ... it's not done. Everything is short term and cost led. They are lucky if they get left with a list of contacts including NGOs."*⁴⁹

Those who had experience of implementing triple planning described how hard it was in practice – it contradicts the concept of permanence in the care planning process. Until there is a final immigration decision, it is hard for social workers to plan with young people, particularly where the young person may have unrealistic expectations.⁵⁰ Triple planning is not a barrier to a durable solution and indeed could be a useful tool in working towards such a solution. However the delays in the immigration decision-making process remain a barrier.

*"You can't plan when their status is up in the air and remains so, way beyond turning 18."*⁵¹

The Association of Directors of Children's Services (ADCS) Asylum Taskforce is currently working with the Home Office to develop guidance on care planning in this context.⁵²

Once again respondents indicated that they feel that there is a need for much more specialist training. A criminal solicitor described how many of her clients were trafficked at the age of 14 or 15, and in consequence of their exploitation have often lived in solitary confinement away from others for several years. Their needs are complex and range from extreme post-traumatic stress disorder (PTSD) to insomnia and physical health issues such as malnourishment and kidney stones. She believes that if professionals are to be able to respond to these types of challenges they will need to receive specialist training.

*"They are slowly re-integrating back into society, but they are still not normal. They need support to escort them on the bus because they are scared, constantly frightened of being re-trafficked or seeing their traffickers in the street. It is a slow process."*⁵³

49 Project worker
50 Deputy Service Manager
51 Deputy Team Manager
52 Local authority Director
53 Solicitor

Whilst specialist projects do exist, the majority of them are located in London and the South East. The projects are often limited by time frames and definitions, in terms of what they can offer child victims of trafficking. Some of the projects can only offer support for a six-week or six-month period, some are only funded to offer support until a young person turns 18, and others are only funded to provide support to victims who have a conclusive grounds decision from the NRM. All interviewees identified a need for more of these projects, across a broader geographical area, and for support to be available beyond 18 years of age.

3.6 Leaving care services and trafficked young people

Many trafficked children in England and Wales will be looked after under Section 20 of the 1989 Children Act. This does not mean that the local authority acquires parental responsibility for the child, however it does require them to provide accommodation, care and support for the child. If staying in the UK, children supported under Section 20 would be entitled to leaving care support upon turning 18 to enable them to transition to adulthood and independence. Although the support varies depending on the local authority, it is recognised as being vital for children. Importantly, in *R (SO) v London Borough of Barking and Dagenham* (2010) EWCA Civ 1101 the court found that section 23C(4)(c) of the 1989 Children Act did provide a local authority with the power to accommodate and support a young person entitled to leaving care support if they qualify for it, even if they no longer have immigration status. Despite this ruling, some trafficked children do not receive the leaving care support to which they are entitled.

“The young adult as a care leaver is just an older child. They say that return at 18 ticks the box as a durable solution, but it is very destructive to see forced return at 18 as a durable solution.”⁵⁴

A grant of UASC leave has an impact on the services that look after and are responsible for planning for a child’s future, as well as on the wellbeing of a child, who has a cloud of uncertainty hanging over their future. Such grants of leave are currently being made in isolation of any best interests assessment, including any assessment of the implications of removal when a young person turns 18.

“The lack of a long term plan for safe settlement denies a child opportunities for normality and prevents them having realistic hopes for the future.”⁵⁵

“We have young people who get discretionary leave until 17½ years and then they will be applying to extend their leave but they don’t have support during this time, it is such a difficult time as they are leaving care, in supported lodgings, and we are talking about children who have been trafficked – this isn’t safe and it leaves them vulnerable.”⁵⁶

UASC leave can be appealed or extended when it is due to expire, which leaves social workers and other children’s practitioners uncertain over how long the child might be in their care. As a result, there is some evidence that long-term planning is shelved and local authorities just carry out care planning for children’s immediate needs.

54 NGO Director
55 NGO worker
56 Project worker

CASE SNAPSHOT 4

A girl arrived in the UK as a nine-year-old child with family members and worked in domestic servitude. Following a child protection investigation she was taken into care at age 16. Shortly after, her age was disputed and the local authority assessed her to be 26 years old, despite evidence showing she had arrived in the UK at the age of nine. She applied for asylum but this was refused and she was granted humanitarian protection. She was granted five years humanitarian protection, the standard length of time, however this was challenged by her legal team on the grounds that it was not compliant with the requirement within the EU ‘Trafficking Directive’ for a durable solution to be planned for. It was argued that the only durable solution for the girl was settlement. The impact on the girl was considerable: she was anxious and fearful over the uncertainty surrounding her future, the five year limit of the humanitarian protection she had been granted, and how she would manage applying for an extension to her leave without support. She was worried that she might be apprehended and removed to her country of origin at any time, a country she hadn’t known since she left as a child. She was eventually granted indefinite leave to remain.

3.7 Psychological impact of trafficking and support

Child victims of trafficking have been treated as objects and commodities during a critical phase of their development and need adult engagement, substitute care, advocacy and a therapeutic and supportive environment. Many need psychotherapeutic treatment. Because of their experiences they are often unable to accurately articulate and share their experiences with the range of professionals who engage with them.

‘One of the key factors when presenting a case for asylum is the ability of the asylum seeker to remember past experiences, usually traumatic, and give a coherent account of these to officials. A common assumption is that an experience of severe violence or torture will be so important that it will be remembered very clearly over the long term. If applicants for asylum change their account of their experiences (give discrepant accounts), this is therefore taken to suggest fabrication. This is an understandable view but one which is challenged by scientific evidence.’⁵⁷

Those who attempt to recount their experiences and talk about painful memories often have great difficulty in doing so and indeed can find this process re-traumatising.

One respondent commented that her experience of therapeutic and psychotherapeutic work with child and adolescent survivors of trafficking indicates that they develop many strategies to avoid trauma symptoms, such as intrusive thoughts and flashbacks, as well as depression and severe anxieties connected to massive loss, and fears of abandonment or annihilation. The short, medium and long-term consequences of child trafficking need to be recorded, acknowledged and addressed in any durable solution.

3.8 Differential treatment

There is anecdotal evidence from our research to suggest that the outcomes for children in terms of their ability to integrate into the UK and plan for a durable solution is affected by variables based on their identity, including gender, nationality and the nature of exploitation involved in their trafficking.

Most practitioners and social workers have some awareness of trafficking for the purposes of sexual exploitation, yet children who are trafficked and exploited for different purposes are not so easily recognised or identified as victims of trafficking. These groups can include children who are trafficked for criminal activity such as cannabis factories, children who are trafficked for domestic servitude and children who are trafficked to engage in petty crime. When authorities do not recognise that a child is a victim of trafficking, there are clear implications for their ability to access services and support, and they

57 J. Herlihy and S.W. Turner, 2007, Asylum claims and memories of trauma: Sharing our knowledge, *British Journal of Psychiatry*, 191: 3–4

are much more vulnerable to re-exploitation.⁵⁸ Those who go through the criminal justice system may be penalised and are more likely to be detained and removed.⁵⁹ In these cases it is important that potential victims are identified at the outset; for example, at police stations when they initially come to the attention of the police. Criminal legal representatives called for much greater training for police, prosecutors, and other practitioners in order to help the identification of this group of children. Under the new measures in the Modern Slavery Act, trafficked children should not be prosecuted for crimes relating to their trafficking situation. However, the need to educate police, legal advisers, social workers, prosecutors and judges regarding the application of the Act remains.

Victims of trafficking who have become caught up in criminal activity can find themselves going through two legal processes – the criminal case and their immigration/asylum case. According to some legal practitioners interviewed during this research, very often the Home Office will delay decision-making on an immigration/asylum case until a decision has been made on the criminal case. This has huge implications for what a young person feels safe to disclose, as they are terrified that the evidence they give will lead to a return to their country of origin.

Some of the reasons why children migrate and are exploited are seen as ‘something other cultures do’. For example, practitioners described how young people who have been trafficked for domestic servitude tend not to be recognised as victims of trafficking under the NRM, and are less likely to be awarded leave to remain.⁶⁰

Girls from Nigeria are typically trafficked for sexual exploitation, and very often arrive using genuine, but not their own, identification documents. Despite Home Office country information reports identifying the ease with which false documents can be obtained in Nigeria, this information is often overlooked and immigration authorities take the documentation being presented as genuine. Local authorities will then follow the Home Office lead, which has huge repercussions for the young person in terms of access to support and protection, particularly if the age on the false documents presents them as an adult.⁶¹

Finally, there was a suggestion that girls are more likely to access support and services, and to be identified as child victims of trafficking, than boys. For example, while girls are generally put into foster care, boys are often put into shared accommodation from which they often go missing.⁶²

“We find that girls’ cases are taken more seriously than cases involving boys. Especially Vietnamese boys, who will be put in supported lodgings or hostels where there are no staff overnight and they can come and go as they wish. Even though we advocate for safe accommodation, local authorities say they don’t have the resources. I think there is a feeling in relation to Vietnamese boys that they are going to go missing anyway, so they are given a different level of service. Also, there is an assumption – a misconception – that because they are male they are less vulnerable.”⁶³

58 NGO worker

59 In *L & Others* [2013] EWCA Crim 991 in a case involving a child who had been trafficked to the UK for the purposes of criminal exploitation within a cannabis factory, the Court of Appeal (Criminal Division) found that; “The Act does not provide for the non-prosecution of trafficked children but the issue was addressed by the Court of Appeal (Criminal Division) in *L & Others* [2013] EWCA Crim 991. The Lord Chief Justice of England and Wales found that it would be an abuse of process to prosecute a trafficked person if the offences with which he or she was charged are integral to or consequent on the exploitation of which he was victim. It had been argued on behalf of the Children’s Commissioner for England that this test was appropriate where a child had been trafficked. This was because Article 8 of the EU Directive on preventing and combating trafficking in human beings and protecting its victims states that trafficking victims should not be prosecuted for their involvement in criminal activities which they have been compelled to commit and, of course, it is not necessary to establish that a child has been subjected to any “means” of trafficking, such as compulsion, to show that he or she had been trafficked.

60 Project worker

61 Solicitor

62 NGO worker

63 Project worker

3.9 Support at transition points

A serious concern raised through this research was the vulnerability that child victims of trafficking face at transition points when they turn 18 and leave care. This is particularly significant for those children who have temporary forms of leave and must apply to extend their leave or appeal a decision, and find themselves with little support to do so.

“They see their traffickers in the street – it is a slow process. They have such high support needs. This falls off a cliff when they turn 18 and leaves them vulnerable to being re-trafficked or falling in with other groups who will exploit them in other ways.”⁶⁴

The challenges that this group of children face as they transition are leading to many becoming vulnerable to further exploitation and re-victimisation. Project workers described how many young women go on to have unhealthy abusive relationships, re-establish contact with their traffickers and become pregnant. Those who qualify for leaving care support are not always being supported to understand the current processes or next steps they need to go through. A project worker described how one girl had such little understanding that when she was moved to independent accommodation she didn’t know where she was and was frightened to leave. She didn’t know what her responsibilities were and thought she would have to pay for water so wasn’t washing or drinking.

If young people do not qualify for leaving care support, they might be referred to adult social care. However in order to qualify for this support, there needs to be evidence of an ‘immediate risk of harm’, and project and social workers have to fight hard to evidence this.⁶⁵

For those victims of trafficking who are only granted discretionary leave, and those whose appeal rights are exhausted, the future at this point is even bleaker. Project workers and social workers who were interviewed described how this group of young people are not able to access a leaving care service, or in some cases even a subsistence grant. These young people live in constant fear of removal.⁶⁶ An example was given of a young man from Asia whose appeal rights were exhausted and presented evidence of self-harming; service providers were extremely concerned about his mental and emotional wellbeing. It is important to remember that, although they are now adults, they were in fact trafficked when they were children.

The leaving care provisions of the Children Act 1989 fall within Schedule 3 of the 2002 Nationality, Immigration and Asylum Act, (NIAA) that limits the duties of the local authority to provide leaving care services, and makes them subject to a Human Rights Assessment. However, case law has clarified that Schedule 3 only restricts a local authority from providing financial support, and a former unaccompanied asylum seeking child, even if excluded from accommodation and financial support, remains eligible for some types of support, for example a personal adviser and maintenance of a pathway [leaving care] plan.⁶⁷ In practice it appears that each local authority interprets this guidance in different ways. Some local authorities have developed their own human rights assessments with which to assess whether or not withdrawal of support would be a breach of human rights.

“It all comes down to the individual worker, it isn’t a duty, but if the individual is committed then they will continue to accommodate the young person. Otherwise they could do a human rights assessment (for a case where appeal rights are exhausted) which means they could stop assistance payments.”⁶⁸

There is particularly worrying evidence that, on the basis of these assessments, some local authorities are making the decision to return young people themselves. Interviewees described how young people were bought a plane or coach ticket and escorted to the station on the day that they turned 18.

64 Solicitor

65 Project worker

66 Project worker

67 NRPF Network, (2011) Practice Guidance for Local Authorities Assessing and Supporting Children & Families and Former Looked-after Children who have No Recourse to Public Funds (NRPF) for Support from Local Authorities under the Children Act 1989, p36

68 Deputy Team Manager

One local authority has developed a form to review care leavers who have turned 18. Despite the fact that some of these young people still had fresh claims or claims pending, the local authority carried out a wholesale review of cases to identify those young people who they could return. Despite the young people having no legal representation or advocates, this was seen to be legal under Schedule 3 of the 2002 NIAA.

3.10 Child trafficking in a child protection framework

The stakeholders consulted during this research said it appeared that a child's immigration status, and status as a migrant in general, takes precedence over their status as a child victim of trafficking. Interviewees observed that local authorities are not responding sufficiently to these children through a child protection lens, or fulfilling their role as corporate parents, or carrying out permanence planning. One respondent commented,

*"The local authority works to immigration status rather than trafficking status."*⁶⁹

It was suggested by an interviewee that labelling a case as a trafficking issue may be doing more harm than good, and that it is misleading to consider trafficking as a specialist issue when ultimately it is about child protection expertise. While labels might help to signpost children to certain services, they can also be unhelpful and demarcate certain groups of children as 'different', creating different expectations and responses from practitioners.⁷⁰

Comparisons were drawn between responses to migrant children and UK citizen children who are victims of exploitation. According to a representative of the ADCS Asylum Taskforce, trafficking had been rising up the children's services agenda until revelations of the organised child sexual exploitation (CSE) that took place in Rotherham⁷¹ drew attention away from it. The sexual exploitation of UK citizen children became a highly political issue and there is a lot of pressure on local authorities to show how they are responding. For example, one local authority has established a local strategic partnership conference and a Child Sexual Exploitation Coordinator role. As part of Operation Make Safe, they are liaising with the police and raising awareness about CSE with hotels, taxi chains, and fast food outlets as a way of trying to identify where perpetrators might be based.

While funding and political focus on CSE has increased significantly since 'Rotherham', funding for specialist services and placements for child victims of trafficking have been cut in a number of local authorities.

*"These children are off the radar. Most people just don't care ... unless it's something like Rotherham ... where it is happening to white girls."*⁷²

*"There's a lack of publicity (on the rights and entitlements of trafficked children) ... it's different for child sexual exploitation ... CSE gets a lot more press, but the two are not being linked together. A lot more work needs to be done as authorities aren't always acting within the law."*⁷³

When they encounter a trafficked child, local authorities may not always see a child in need or a child protection case, and do not respond in the same way as they might do to a CSE case. Therefore, while systems developed for UK children in terms of child sexual exploitation contain a child protection component, child victims of trafficking aren't being included in these responses. Also, while child sexual exploitation is seen to be at the sharp end of child protection concerns, there is a lack of understanding about the exploitation elements of other forms of trafficking such as labour exploitation. A child who has

69 Project worker

70 Academic

71 Approximately 1400 children were victims of child sexual exploitation within Rotherham between 1997 and 2013. Independent Inquiry into child sexual exploitation in Rotherham 1997 – 2013, Alexis Jay.

72 NGO Director

73 Deputy Team Manager

been treated as a domestic slave may have suffered long lasting psychological and physical damage as a result of brutal treatment, but often this isn't recognised or acknowledged. The ways in which policies, programmes and service responses are based on the categorisation of children can sometimes work to the detriment of some very vulnerable groups.

3.11 Return and reintegration

In both the UN Convention on the Rights of the Child and the 1951 Refugee Convention, a durable solution focus is the protection of the family unit, extending as appropriate to family tracing and family reunion. A discussion paper on durable solutions noted:

*'... all too frequently the 'rush to solutions' for refugee children deprived of their family has led to premature insistence on resettlement, adoption and foster placement, rather than a more structured and considered approach to the needs of the child in context. Such an approach means going beyond the immediate personal situation of the child to look at the place and time from which he or she comes, with a view to dealing not only with the causes for concern, but also with the causes of displacement.'*⁷⁴

There is no evidence to suggest that decision makers are exploring the causes of displacement for child victims of trafficking, and therefore using this evidence to inform long-term planning and decision-making for this group of children. Very few of those interviewed for this research knew of any cases where a child victim of trafficking had been returned and reunited with their family following careful family tracing and assessment of the care and protection available upon return. The overwhelming majority of cases of return that were described in the research were cases of forced return for those child victims of trafficking whose appeal rights are exhausted, or children who are from within the EEA and are therefore not claiming asylum.

The clear finding from the research is that return is not pro-actively considered and explored as a possible durable solution, but instead is the repercussion of a negative outcome to an asylum application. Children in these situations are left extremely vulnerable as they are returned without any checks and assessments, and there is evidence of further exploitation and re-trafficking as a result.

CASE SNAPSHOT 5

A 17-year-old Vietnamese boy was criminalised for activities he undertook while he was being exploited. He was moved around the detention estate in Scotland and then moved to England, meaning that he was in a different jurisdiction and gaining appropriate legal advice became problematic. Although subsequently identified as a victim of trafficking, he was refused asylum. His new legal representative did not meet him to explain the decision or other legal avenues open to him. With face-to-face contact lost from his guardian (Scottish Guardianship Scheme), he became confused, defeated and withdrawn. With no advice or guidance he quickly signed paperwork that offered him an amount of money to leave the country under the facilitated return scheme – a form of removal for foreign national prisoners. No support package was available to him, so no planning for a safe, dignified and sustainable return was achieved. He was booked to fly to a city he had no connection with and was to be given a card that had the payment pre-loaded on to it. The guardian was able to negotiate with the Home Office that he should be allowed to fly into a city where it was thought his aunt might reside. He appeared bewildered at the point of removal and had clearly had his rights to representation, advocacy and practical support and advice negated. He was then removed from the UK with no firm plans in place and contact has been lost.

74 Goodwin-Gill, G.S 'Unaccompanied refugee minors: The role of international law in the pursuit of durable solutions' in The International Journal of Children's Rights 3: 405-416 1995 p410

3.11.1 Family tracing and family reunification

The Committee on the Rights of the Child emphasises family tracing as an essential component in the search for a durable solution. However, it also notes that family reunification in the country of origin should only take place where there is no reasonable risk that a return would lead to a violation of the fundamental rights of the child. Thus a specific consideration here that needs a thorough assessment is whether or not the child's family were complicit in the trafficking of their child and, if so, to what extent. In addition, an assessment needs to be undertaken to establish whether or not the family are able to protect their child from re-trafficking. This could in part examine the family attitude to trafficking and would also need to assess the family's ability to prevent traffickers using force and/or financial coercion on the family and the child.

Evidence from this research and elsewhere suggests that family tracing is rarely explored. While the UKVI is obliged to try and trace the family of a child asylum seeker, it often fails to comply with this responsibility or seeks to do the bare minimum, for example a single email to the relevant post overseas.⁷⁵

Some practitioners we spoke to were aware of instances where social workers had explored family tracing, however they expressed a lack of confidence in general about taking this forward. There were concerns that it can be carried out without a child's permission – and even with the child's permission, the evidence could be used as part of their asylum case – so practitioners were wary about whether or not they should instigate or even mention it as an option to children.⁷⁶ In the case of *TN and MA (Afghanistan) v Secretary of State for the Home Department (2015) UKSC 40*, the Supreme Court found that a best interests assessment must be carried out before any family tracing takes place.

3.11.2 Return of child victims of trafficking

Case studies gathered through this research clearly illustrate the complexities involved in family tracing and making assessments about the viability of return in relation to victims of trafficking. They also highlight a lack of guidance, support or mechanisms to explore family tracing and the safety or sustainability of return as a durable solution.

CASE SNAPSHOT 6

A girl from East Africa was abducted and taken to a third country where she was forced to work in domestic servitude. She finally escaped from her situation when she was 17 and made her way to the UK. She desperately missed her family and found the support of a programme for child victims of trafficking (Poppy) where one of the support workers helped her to contact the British Red Cross to initiate family tracing. Sadly, they were unable to trace her family and she has remained in the UK where she now has refugee status.

CASE SNAPSHOT 7

A 15-year-old girl had a conclusive grounds decision through the NRM and was in the care of a local authority and was also receiving support from a specialist project. She made it clear to both the local authority and the project that she was unhappy being apart from her family, and wanted to return home. The local authority contacted social services in her country of origin, and they carried out risk assessments with her family. The girl was involved in the decision-making process at all stages, and was provided with good support by the local authority. As well as working with social services in her home country, the local authority involved the police who also liaised with the police in the girl's country of origin. She was accompanied to the airport and met upon arrival by the local social services who reunited her with her family. Her project worker has heard that she is safe and doing well, although concerns were expressed about the lack of long-term monitoring mechanisms.

⁷⁵ Asylum Aid, 2012, Asylum Aid's submission to the Joint Committee on Human rights: The Human rights of unaccompanied migrant children and young people in the UK

⁷⁶ Project worker

Very few practitioners or local authority representatives knew of any guidance or processes that would enable them to explore the option of a safe return.

*"For me, in relation to return to country of origin, it's about how that can happen in the safest way possible. I have concerns over whether it is done completely safely by the UK and authorities in the country of origin. We don't have much experience of return."*⁷⁷

It was questioned whether it is realistic to expect social workers to make decisions about a child's country of origin, or to have the resources or knowledge to explore safety issues across various parts of the globe. Social workers are trained to work in the UK and understand the UK context. It is therefore reasonable to assume that they have little understanding of child protection and care planning in other countries.⁷⁸ It puts a huge burden on the social worker to feel able to trust an unknown children's service department in an unfamiliar country, and make an assessment about a child's family in a different cultural context.⁷⁹ Many also questioned whether the local authority should be involved in making decisions about return, suggesting that, given the pressure on resources, decisions would be cost-driven rather than based on an independent best interests assessment.

*"Children need support to help them determine if they want to return, and what they need to return. There needs to be an organisation which will help them use the education or skills they gained over here, and help them get a job. It would need to be a monitored organisation to ensure that they are safe. Otherwise they will just be vulnerable to re-exploitation or trafficking. It needs to be proper long-term support."*⁸⁰

Practitioners working with these children, and particularly with children from within the European Economic Area (EEA), were anxious that the ad hoc nature of these decisions and investigations meant that it is very easy for mistakes to be made. Some mentioned how helpful the organisation Children and Families Across Borders (CFAB) was, but concerns were raised about their limited resources. CFAB is the UK arm of International Social Service, a worldwide network of professionals and partners in 120 countries, which helps local authorities to navigate the multiple legal and social care systems of inter-country casework. The network gives access to expert, on-the ground support but is almost entirely dependent on its own fundraising ability and, as an NGO, has no statutory powers.⁸¹

In order to further explore decision-making and procedures in the context of return, our research touched upon cases of children who are subject to immigration control but who are not child victims of trafficking, and not seeking asylum. This category includes children who are subject to immigration control because they are, or were, the dependants of parents who are seeking leave to remain in the United Kingdom. Some of these children will have been born here but will not have acquired a right to British citizenship. Others may have been taken into care as a result of child protection concerns and are no longer dependant on their parents. Other children are living in private fostering arrangements and have overstayed their leave to remain here or were illegal entrants in the first place.⁸²

The deputy team manager of a London local authority described how the child protection team receives referrals of children with foreign national parents who come into care, sometimes because the main carer has disappeared or because of other child protection concerns. In these cases, viability assessments are carried out with known family and friends in the country of origin, or in third countries where these potential carers might be living. This was thought to illustrate the two-tiered approach that exists, whereby the risk assessments and checks that comprise part of a child protection assessment for some children of foreign nationals are not being applied to child victims of trafficking. These children are being seen through an asylum/immigration lens and just *'put on a plane and returned'*.⁸³

⁷⁷ Project worker

⁷⁸ Academic

⁷⁹ NGO worker

⁸⁰ Deputy Service Manager

⁸¹ NGO worker

⁸² Solicitor

⁸³ NGO Director

Cases of durable solutions for children subject to immigration control are also considered via the family courts. Based on the general duty of local authorities to safeguard and promote the welfare of any child in their area when cases of unaccompanied or separated children are dealt with in the family courts, the viability of the birth family is always considered as the preferred, primary option, and the courts will deploy appropriate people to investigate the details of the family unit.

3.11.3 Forced returns

Many young people simply disappear as or before they turn 18 and no one knows exactly what happens to them and whether or not they have returned home. All of the practitioners interviewed knew of cases of child victims of trafficking who had been removed once they had turned 18, and examples were provided that clearly illustrated a lack of consideration of the child's best interests, and the repercussions this had on any durability of outcome. Examples include a sibling group who had all been trafficked and were living together, being supported by the eldest sibling. However, when the eldest sibling turned 18, the local authority wanted to return him, which would have resulted in splitting up the rest of the sibling group.

CASE SNAPSHOT 8

A young woman first came to the attention of a project for trafficked children just before her 18th birthday. She hadn't been referred to the NRM at this point so was not able to access any associated safeguards, and she hadn't been in local authority care long enough to be entitled to leaving care support. She is an EU citizen and so was not claiming asylum. Soon after she came to the attention of the project, she was returned to her country of origin by the local authority, which simply put her on a coach. The local authority claimed that the girl was going to be met by a friend on arrival, although no checks were carried out. She has subsequently been re-trafficked into the UK and now evidence has come to light that she has previously been through the NRM and has been re-trafficked into the UK a number of times. It is thought that her family are involved in her exploitation and the project is working to try and access support and safeguards for her.

Although the young woman above was not claiming asylum, her case can be used to illustrate the negative repercussions of granting child victims of trafficking discretionary leave. This prevents long-term planning and any safety checks for when their appeal rights are exhausted, and the likelihood of removal increases when they turn 18. The case also illustrates the way in which some local authorities disregard the continuing needs of vulnerable young people. As her project worker explained, *"just because she is turning 18 is not a reason not to safeguard her, it doesn't mean she is no longer at risk at 18."*

Comments from staff in services working with victims of trafficking, suggest that a significant number of child victims of trafficking have been removed and re-trafficked again whilst they are still children. In a similar vein the Poppy Project has found that a significant number of the young adult victims that they support had previously been in the UK and removed at age 18.

"The Home Office says that once they are removed it is not their problem anyway, but they often re-surface so therefore it does become their problem again, and it is costing them money."⁸⁴

3.11.4 The 'politics' of return

Despite international guidance emphasising the priority of family reunification and return as the preferred durable solution where possible, an interesting finding of this research is the reluctance of many service providers and voluntary sector organisations to consider return as a viable option. There is an overwhelming culture of mistrust between these organisations and the government, based primarily on the evidence presented above that clearly illustrates a lack of consideration of the best interests of the child when it comes to planning outcomes for child victims of trafficking.

In a number of interviews, Home Office plans to pilot safe return mechanisms for failed unaccompanied asylum seeking children were discussed. One such pilot is looking at developing a process for returning children to Albania. The Home Office has indicated that the pilot should not impact on what would otherwise happen in these cases, meaning the child will still get the decision on their asylum application or on the type of leave granted that they would have got in any event. The stakeholders interviewed expressed little trust in the asylum determination system, and believe that the protection needs of this group of children have not always been adequately addressed. There were concerns about the possibility of secondary abandonment after return and a lack of trust in the pilot being able to plan for the long-term reintegration and rehabilitation of the returned children. It was suggested that the design of the pilots illustrates clearly that the government's response to return is based on numbers and cost rather than children's rights, best interests and safety. The piloting of returns to countries from which there are high numbers of unaccompanied and separated children suggests a generalised approach based on nationality, rather than a proper structure to enable a durable solution based on the child's best interests to be reached on a case by case basis.

3.12 Third country relocation

According to the Committee on the Rights of the Child General Comment 6, relocation to a third country may be a durable solution for an unaccompanied or separated child who cannot return to their country of origin and where a durable solution is not envisaged in the host country. The decision must be based on a comprehensive assessment of the best interests of the child. It is perhaps an option if this would serve family reunification and as such could be a durable solution for a child. Third country relocation for children seeking a durable solution in the UK is very rare and specifically so for children who have been trafficked. None of the stakeholders interviewed during this research provided examples where this has happened.

4. CONCLUSION

*'Solutions for children cannot be mortgaged to some future time and place... to be durable they must contribute NOW to the full development of the child.'*⁸⁵

The overall view of those interviewed was that the trafficking of children is a child protection matter. It may have additional complications associated with transnational organised crime, matters of immigration and global migration movements, yet ultimately boils down to the abuse of children. It damages children both in the short and long-term, destroying the childhood of many of these children. It is incumbent on all professionals working with children who have been trafficked to keep them safe from harm and to help their rehabilitation as they deal with and address their often horrific experiences.

Currently, there is no durable solution for trafficked children 'as a matter of course'. Stakeholders shared the view that a durable solution is more than just a matter of immigration status and should consider welfare, education, health, social care and other needs. However immigration status is a pivotal part of any durable solution as it is not possible to have a long term solution to a child's situation without a secure status.

The barriers to durable solutions for these children are varied.

■ In relation to process

Long delays in the asylum determination procedure are often compounded by disputes about the child's age, leading to periods during which the child is detained as an adult. Many children wait for protracted periods before hearing the outcome of their application.

■ In relation to services

Too often, children's services managers and social workers fail to address the particular needs that trafficked children present. They do not always recognise the signs that a child has been trafficked and are too often willing to defer to the Home Office rather than to forge ahead with the planning process.

■ In relation to immigration status

For too many children, the outcome of their asylum application is a form of temporary leave in the UK, with no clarity about permission to remain beyond 18 years of age. By definition, UASC leave (temporary leave to remain) is not a long-term, permanent or durable solution.

■ In relation to returns

One consequence of being given UASC leave (temporary leave to remain) is that many children simply drift until they are 18 and are then subject to removal. There is minimal consideration of return to the country of origin prior to age 18 as a durable solution where this is in the best interests of the child, and no real appetite to vigorously pursue the return of children on a case-by-case basis.

The National Referral Mechanism (NRM) was seen to have very little positive impact for children and was perceived as a mechanism to collate statistics and 'catch criminals' rather than offering any real protection for children. Indeed the view was expressed that the NRM was an inappropriate and unnecessary forum for deciding whether or not a child had been trafficked and that this function would be much better served within existing child protection structures, namely Multi-agency Safeguarding Hubs (MASH). Many of these concerns have been addressed in the review of the NRM that recommended the support system for identifying and supporting victims of trafficking should be overhauled. As a result, pilots were launched in August 2015 and significant changes to the NRM are expected to be implemented in late 2016.

⁸⁵ Goodwin-Gill, G.S 'Unaccompanied refugee minors: The role of international law in the pursuit of durable solutions' in The International Journal of Children's Rights 3: 405-416 1995 p407

There was universal agreement that achieving a durable solution for a child who has been trafficked should not be within the domain of a single agency. The durable solution must involve a range of actors and should entail a multi-agency approach. However, lead responsibility should rest with the agency responsible for the child's overall welfare and thus children's services departments were seen as the obvious agency to lead on the delivery of the durable solution.

5. RECOMMENDATIONS

Having a durable solution means plans are in place, support is available, and children are helped throughout their childhood with a view to their future. In order to get there, we all need to begin to see and respond to child trafficking, first and foremost, as a child protection issue. The establishment of the Global Partnership to End Violence Against Children is an opportunity for all levels of government in the UK to prioritise child protection and work together with partners to find solutions for tackling violence, including child trafficking.

More specifically and immediately, in order to meet their needs and help child victims of trafficking to realise the full range of their rights, Unicef UK urges the UK government to:

5.1 Ensure that child trafficking is addressed as a child protection issue within a child protection framework

Local authorities are under a statutory duty to safeguard and promote the welfare of trafficked children, yet poor practice is impeding this. Too many of those working with these children wait for confirmation that the child has been trafficked before they assess their protection needs. This is not in the child's best interests, and destabilises the care and support available to that child. We ask the Home Office and DfE to work with representative groups such as the College of Policing, Association of Directors of Children's Services (ADCS) and the Local Government Association (LGA), as well as individual local authorities in England, to develop and deliver a comprehensive programme of training on child trafficking for the police, commissioners of children's services, child protection social workers, care teams, leaving care teams, foster carers and residential care workers.

5.2 Fully implement the National Referral Mechanism (NRM) reforms in order to lead to a durable solution for trafficked children

The National Referral Mechanism is a framework for identifying victims of human trafficking. When a child is suspected of being trafficked, their case is referred to the NRM for consideration. The NRM is under reform,⁸⁶ and this should address shortcomings identified in the research. The Home Office must raise awareness and promote the new system to the frontline staff who are most likely to make contact with a trafficked child; and ensure the panels making decisions about children's cases are appropriately trained and supported. We want to see an efficient and reliable NRM in place that quickly recognises child victims of trafficking and temporarily regulates their status, immediately followed by the search for a durable solution for each child. The best interests of the child must be the leading principle used throughout the process, and should be explicitly recognised in the new NRM policy.

5.3 Make sure trafficked children are not punished for crimes they commit that are related to their trafficked status

It is a principle of international law that children cannot consent to being exploited. Prosecuting a trafficked child for crimes they have been forced to commit is a violation of their basic rights. Section 45 of the Modern Slavery Act 2015 provides for a defence for children who have committed an offence as a direct result of their being a victim of slavery, trafficking or exploitation. However, trafficked children will still have to pass a 'reasonable person test' in order to access the defence; this requires an adult juror to decide

⁸⁶ including the creation of Anti Slavery safeguarding leads at local authority level; streamlining the referral process for potential victims of trafficking; and setting up multi-disciplinary panels to decide on cases

whether a similar child in similar circumstances would have acted in the same way. We want to see all UK trafficking legislation incorporate a non-prosecution principle to protect children from inappropriate detention, prosecution and punishment without first having to pass this test. The Crown Prosecution Service (CPS) will be working to update legal guidance on human trafficking – this must support the non-prosecution principle for children, and be accompanied by Continuing Professional Development (CPF) training for legal practitioners and the police.

5.4 Establish a formal Best Interests Determination (BID) process

When a child is identified as having been trafficked through the NRM, it is time to find out which durable solution would be best for that child. A multi-agency Best Interests Determination (BID) process, undertaken within a child protection framework and that takes into account the views of all of those working with the child, the child's advocate/guardian and the child him or herself, is the key assessment tool for determining this. We recommend that the government set up a BID process that can operate using existing mechanisms: for example, local Multi-Agency Safeguarding Hubs (MASH), if they are given an expanded role that includes specific child protection responsibilities for trafficked children.

5.5 Ensure children's advocates and guardians are involved in durable solution decisions

Independent children's advocates (in England and Wales), and children's guardians (in Northern Ireland and Scotland) provide protection and support for trafficked children, and fulfil a preventive and supportive role for those who are at risk of being re-trafficked. They help trafficked children realise the full range of their rights, and guide them through the social care, immigration and criminal justice systems. The services are relatively new – a pilot of the independent children's advocates service ends this year, with some uncertainty over whether or not it will continue. We want to see children's advocates and guardians accompanying trafficked children through the entire decision-making process, with the independent advocacy service established in Home Office regulations. Over the longer term, we want to see advocates or guardians appointed for all separated migrant children.

5.6 Review forms of leave available for child victims of trafficking

Planning for a durable solution is not possible until a child's immigration status has been regularised. Currently, Refugee Status and Humanitarian Protection are the only forms of leave available to trafficked children that facilitate a durable solution. However, the majority of unaccompanied asylum-seeking children are granted UASC, or temporary, leave which finishes when the child reaches 17½, and prevents the local authority from making any long-term plans with or for the child. We ask the Home Office to review and revise the current forms of leave and ensure that an additional form of leave is available to those children who are formally recognised as child victims of trafficking through the NRM, and for whom a BID establishes that it is in their best interests to remain in the UK. Under these circumstances, we recommend that they are given indefinite leave to remain.

5.7 Invest in research to find out what happens to child victims of trafficking

Despite the government's increased focus on modern slavery, trafficking and exploitation, there are still significant research gaps that make it difficult to know: who and how many children we may be failing to identify and support; whether those who are identified are able to access the full range of their rights; and what happens to them when they become adults – in other words, whether a durable solution is being found for these children. We ask the DfE to review how well the existing statutory guidance on UASC and trafficked children is being used by local authorities. We urge the Home Office to collect and publish data on a range of areas: for example, what immigration status has been given to child victims of trafficking; how many and in what circumstances children are returned to their country of origin or relocated to a third country; and how many children are reunited with their families.

Appendix one

STAKEHOLDER QUESTIONNAIRE

1. What do you understand by the term 'durable solution' and is it a term you are familiar with. What do you think it means regarding children – i.e. what components constitute a durable solution?
2. What level of understanding is there at the local level of what constitutes a durable solution for a trafficked child among general and specialist services (i.e. local integration, return, and third country solution)? Or consideration of what constitutes a durable solution beyond these three options?
3. To what extent do care plans (as outlined under the DfE statutory guidance July 2014) enable a durable solution to be reached? Does the guidance work for planning purposes regarding children who have been trafficked? Are plans different concerning children who have been internally trafficked compared to children who have been trafficked internationally? (also see 7 below)
4. Does care planning incorporate the full scope of considerations required to achieve a durable solution for a trafficked children (i.e. health, education, accommodation, other)?
5. Does care planning (finding a durable solution) take into account the international nature of some child trafficking? Does long term planning address this international dimension?
6. Is there any monitoring of long-term outcomes for trafficked children at the local level (additional to immigration status)?
7. (If possible) Are there discrepancies in durable solution outcomes for trafficked children (i.e. trafficking status, immigration status, education provision) based on nationality, age, type of exploitation, care status?
8. Is the achievement of a durable solution seen as a duty of local statutory services or for the Home Office or other agencies?
9. What has happened to the child victims of trafficking who have got a conclusive decision via NRM or have not gone through the NRM but are recognised as trafficked cases; i.e. what is their immigration status in the UK?
10. Do children who have been trafficked receive a durable solution (long term stable care plan) and if so how many?
11. Are there statistics on the numbers of children who are identified as having been trafficked and who go missing from care? Do they turn up and if so what has happened to them?

**FOR
EVERY
CHILD IN
DANGER**

