

# Determinants of Anti-Trafficking Efforts



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## Case Study: United Kingdom

This report is published as part of the 'Determinants of Anti-Trafficking Efforts' Project. The project assesses the links and sequencing of specific factors that have yielded improved political will and capacity in national governments to address trafficking in persons and which have led to sustained and comprehensive anti-trafficking efforts. Through a multi-pronged approach, this project will conduct a review/meta-analysis of the current research and contribute a new data-set through expert interviews, a first of its kind global survey and a series of 14 case studies.

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Gift of the United States Government



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# Executive Summary

This study seeks to identify the factors that have determined the incremental development of the UK's anti-trafficking response. The findings are based on an in-depth cross-temporal analysis of relevant policy, legislation, independent reports, evaluations and grey literature, combined with the views of the interviewees who participated in this study. A sequencing of key developments along with a consensus of opinion that emerged through the interviews, indicates the role and influence of a number of key determinants. Due to the complexity and interwoven nature of these factors it is not possible to attribute specific weight to determinants when viewed in isolation. Rather, it is an amalgam of the identified determinants, that are context-specific, non-linear and multi-dimensional, that has informed and shaped the UK's anti-trafficking efforts.

Over the last decade, ratification of international and regional legal frameworks, combined with the sustained efforts of civil society organisations and survivor networks and the role of regional and domestic courts in holding the government to account, have placed significant pressure on the government to develop its domestic law and policy. However, in the absence of political will, there is a limit to the outcomes these factors can achieve. Undeniably, the sustained individual political will from Theresa May was integral to human trafficking being prioritised on the political agenda. This individual political will was crucially strengthened by cross-party political support and the consequent allocation of resources and funding that were fundamental drivers behind the enactment of dedicated legislation, the publication of strategies and action plans and the establishment of institutions and systems to combat human trafficking and support victims.

Elevation of the international reputation of the UK and a desire to be viewed as a world-leader in combating modern slavery was a factor that underpinned the individual political will and cross-party support for improving the UK's anti-trafficking efforts. To a lesser and unknown degree, a number of interviewees identified the UK's colonial past and a sense of religious morality as being potential determinants for certain political actors who were dedicated to improving the UK's anti-trafficking efforts.

Specific to the UK's political landscape, the prioritisation of immigration policy has repeatedly been identified as a factor that has resolutely influenced and shaped all areas of the government's anti-trafficking response. The prioritisation of immigration policy underpinned the government's political will in embracing modern slavery as a vehicle through which it could impose stricter immigration and border control under the guise of prevention action. Prioritisation of immigration policy has also been identified as a determinant behind the government's reticence to enhance or expand support and assistance for survivors for fear of creating a 'pull factor' that would undermine its efforts to stem the flow of migration into the UK.

# Introduction

Within the last decade the UK's anti-trafficking response has undergone considerable development and progression. Dedicated statutes have been enacted; the Modern Slavery Act 2015 ('MSA 2015') in England and Wales, the Human Trafficking and Exploitation (Scotland) Act 2015, and the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015. These statutes have, *inter alia*, created the role of the UK Independent Anti-Slavery Commissioner<sup>1</sup> and have introduced new provisions designed to tackle labour exploitation in supply chains,<sup>2</sup> to place the principle of non-prosecution of victims on a statutory footing<sup>3</sup> and to better support child victims through the appointment of Independent Child Trafficking Guardians.<sup>4</sup> These measures are supported by statutory and non-statutory guidance.<sup>5</sup> Central and devolved governments have also produced Modern Slavery Strategies<sup>6</sup> and published annual reports.<sup>7</sup>

A number of pilot schemes and evaluations have been undertaken to further develop anti-trafficking efforts. These include the Independent Child Trafficking Guardians Pilot and the pilot on devolved decision-making for child victims of modern slavery.<sup>8</sup> The National Referral Mechanism ('NRM'), which was implemented in 2009 to identify victims, has been

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<sup>1</sup> Part 4 MSA 2015.

<sup>2</sup> Section 54 MSA 2015 which applies to any commercial organisation (wherever incorporated or formed) with over £36m turnover that carries on a business, or part of a business, in any part of the United Kingdom. In 2021 the government launched a central public registry for modern slavery statements; <https://modern-slavery-statement-registry.service.gov.uk/>

<sup>3</sup> Section 45 MSA 2015, Section 8 the Human Trafficking and Exploitation (Scotland) Act 2015 and Section 22 Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

<sup>4</sup> Section 48 MSA 2015 (NB. not yet commenced), Section 11 of the Human Trafficking and Exploitation (Scotland) Act 2015 and Section 21 of Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

<sup>5</sup> Home Office, "Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland" (first published March 2020, most up to date version 2.3 dated 14 June 2021), Home Office, "Statutory Guidance: Transparency in supply chains: a practical guide" (first published in 2015, most up to date version 22 July 2021), the Welsh "Code of Practice; Ethical Employment in Supply Chains" (2017), "Tackling Modern Slavery in Government Supply Chains; A Guide for commercial and procurement professionals" (2019), "Tackling Modern Slavery in PPE Supply Chains" - practical guides for both PPE suppliers and public bodies (April 2021) and Home Office "Interim Guidance on Independent Child Trafficking Guardians" (May 2021) which should be read in conjunction with the Department for Education Statutory Guidance for local authorities, "Care of Unaccompanied Migrant Children and Child Victims of Modern Slavery" (November 2017).

<sup>6</sup> UK Modern Slavery Strategy (November 2014), Scottish Government Trafficking and Exploitation Strategy (2017) and Northern Ireland's Modern Slavery Strategies.

<sup>7</sup> UK Annual Reports on Modern Slavery and Scottish Government Annual Progress Reports on Trafficking and Exploitation Strategy.

<sup>8</sup> Home Office, "Devolved Child Decision-Making Pilot Programme - General Guidance" (v 1.0 dated 14 June 2021).

subject to a series of reviews and reforms designed to improve its performance.<sup>9</sup> This has resulted in the creation of a Single Competent Authority,<sup>10</sup> the introduction of independent panels to review negative ‘conclusive grounds’ decisions and the publication of guidance.<sup>11</sup> In 2017, the remit of the Gangmasters and Labour Abuse Authority (formerly the GLA) was expanded to enable it to tackle labour exploitation.<sup>12</sup>

Part of this study will focus on two key positive developments, namely the MSA 2015 and the Home Office’s Recovery Needs Assessment Guidance (2019) (‘RNA Guidance’), in order to undertake a more detailed analysis of the determinants behind these efforts. The MSA 2015 is hailed by the government as being a landmark piece of legislation that has set a global benchmark in tackling modern slavery. The determinants behind its introduction and progression into law can be analysed with reference to a number of sources including the pre-legislative scrutiny procedure and the parliamentary debates, the 2016 and 2019 Independent Reviews and the expert views of the interviewees who participated in this study (a number of whom were directly involved in the development of the Modern Slavery Bill). The RNA Guidance, which contains long sought-after protections to ensure longer-term access to support services for survivors, provides an insightful case study into determinants that both compel and deter the government to take anti-trafficking action.

### **Methodology and limitations**

Semi-structured interviews were conducted with 17 individuals across the full spectrum of stakeholders including policy-makers, lawyers and judiciary, academics, independent monitoring bodies, NGOs, victim support providers, civil servants, law enforcement and criminal justice stakeholders. Additionally, a focus group of 5 non-state actors was convened. Due to the low response rate from state actors, it was not possible to convene a state actor focus group. This imbalance in focus group input was partly remedied by the range and calibre of individual interviewees who represented a mixture of state and non-state actors. As such, the views expressed in the interviews and focus group were representational of the diverse range of actors across the sector.

Overall, the study has limitations arising from the relatively small sample of interviewees which hinders the ability to generalise. To counter this, the study sought the involvement of

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<sup>9</sup> Home Office Interim Review of the NRM (October 2014), Home Office Review of the NRM by Jeremy Oppenheim (November 2014), the Home Office pilot to evaluate the proposed reforms to the NRM (2015-17) and evaluation of the pilot (2017).

<sup>10</sup> Previously there were two Competent Authorities within the NRM and responsibility for decision-making was divided according to the nationality of the victim; the Home Office’s UK Border Agency considered referrals involving non-EEA nationals and the UK Human Trafficking Centre considered referrals involving UK and EEA nationals.

<sup>11</sup> Home Office and UK Visa and Immigration, “NRM Guidance: adult (England and Wales)” and “NRM Guidance: adult (Northern Ireland and Scotland)” (most recent version 22 June 2021).

<sup>12</sup> Reforms introduced by the Immigration Act 2016.

individuals in high-level positions with long-standing experience of counter-trafficking efforts who were thereby able to provide comprehensive insight relevant to their specialist areas.

The study also involved in-depth cross temporal analysis of policy, legislation, independent evaluations and other grey literature. As a case study, the UK benefits from a highly developed government response to anti-trafficking and a particularly active civil society sector, both of which provided a wealth of valuable analysis and insight into the key determinants behind anti-trafficking efforts.

# Context

On an international level, the UK has ratified a number of anti-trafficking instruments including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ('Palermo Protocol') which supplements the UN Convention against Transnational Organised Crime. It is also party to the UN Convention on the Elimination of All Forms of Discrimination against Women, the UN Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, as well as the International Labour Organisation ('ILO') Conventions No. 29 and 105 on Forced Labour and Convention No. 182 on Eliminating the Worst Forms of Child Labour. The UK has not ratified ILO Convention No 189 on Decent Work for Domestic Workers. In September 2017, Theresa May, then Prime-Minister, launched a Call to Action to End Forced Labour, Modern Slavery and Human Trafficking at the UN General Assembly (which has been endorsed by almost 90 countries).<sup>13</sup>

On a regional level, as a member of the Council of Europe, the UK is a party to the Convention for the Protection of Human Rights and Fundamental Freedoms ('ECHR'), Article 4 of which prohibits slavery and forced labour. The European Court of Human Rights, responsible for enforcing the ECHR, confirmed in *Rantsev v Cyprus and Russia* that trafficking in human beings within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Council of Europe Convention on Action against Trafficking in Human Beings ('ECAT') falls within the scope of Article 4 ECHR.<sup>14</sup> The ECHR is incorporated into domestic law pursuant to the Human Rights Act 1998 (in force from 2 October 2000).

The UK signed and ratified ECAT and it entered into force on 1 April 2009. ECAT has a strong focus on victim protection and applies a human rights perspective to anti-trafficking efforts. The Group of Experts on Action against Trafficking in Human Beings ('GRETA') periodically evaluates and reports upon the implementation of ECAT by States Parties. The Committee of the Parties makes recommendations for the implementation of GRETA's conclusions. To date, the UK has been subject to two evaluations by GRETA in 2012 and 2016. The third evaluation round commenced in 2020.

The UK has signed but not ratified the Council of Europe Convention against Trafficking in Human Organs and the Convention on Preventing and Combating Violence Against Women and Domestic Violence.

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<sup>13</sup> The Call to Action to End Forced Labour, Modern Slavery and Human Trafficking was launched during the 72nd Meeting of the UN General Assembly (19 September 2017). [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/759332/End-Forced-Labour-Modern-Slavery1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759332/End-Forced-Labour-Modern-Slavery1.pdf)

<sup>14</sup> *Rantsev v Cyprus and Russia* [2010] ECHR 22 [at 282].

As a former member of the European Union (until the end of the EU Exit transition period on 31 December 2020), the UK agreed to be bound by Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims ('EU Directive'). Although no-longer subject to EU law, the government had confirmed its intention to adhere to the provisions of the EU Directive already implemented through domestic law and policy.<sup>15</sup> This commitment is now threatened by the Nationality and Borders Bill that seeks to disapply any rights, powers, liabilities, obligations, restrictions, remedies and procedures derived from the Trafficking Directive that are incompatible with any new provisions introduced by the Bill.<sup>16</sup>

Domestically, the UK seeks to comply with its international obligations through legislation and policy guidance.

The UK's NRM was introduced in 2009 to implement the requirements of ECAT. It is the process through which victims are formally identified and serves as a gateway to access support services. Since its inception it has been subject to two independent reviews and on-going reforms to improve its performance. Identification of victims through the NRM is a 3-stage process; a First Responder<sup>17</sup> makes a referral to the Single Competent Authority ('SCA') (located within the Home Office) who is responsible for making an initial 'reasonable grounds' decision. If this decision is positive, the potential victim is accommodated and supported for reflection and recovery period of 45 days within which period the SCA should make a 'conclusive grounds' decision (in reality, there is a delay of many months before this decision is reached).<sup>18</sup> Unlike potential child victims, adults must consent to being referred into the NRM. For those who withhold consent, s.52 MSA 2015 introduced a new 'duty to notify' which requires public authorities to nonetheless submit an anonymised referral into the NRM for the purpose of data collection.<sup>19</sup> The annual and quarterly 'duty to notify' statistics published by the Home Office are disaggregated by nationality of the victim, by exploitation type and by First Responder.<sup>20</sup> The annual and

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<sup>15</sup> In response to a written question from Lord McColl of Dulwich, on 11 March 2020 Baroness Williams of Trafford confirmed that the UK gives effect to, *inter alia*, the EU Anti-Trafficking Directive (2011/36) through the Modern Slavery Act 2015 and policy guidance and following exit from the EU this legislation and policy will remain unaffected; <https://questions-statements.parliament.uk/written-questions/detail/2020-02-26/HL1945>

<sup>16</sup> Clause 56 Nationality and Borders Bill.

<sup>17</sup> First Responders are designated bodies or organisations who have standing to make referrals into the NRM; police forces, certain parts of the Home Office, UK Visas and Immigration, Border Force, Immigration Enforcement, National Crime Agency, local authorities, Gangmasters and Labour Abuse Authority (GLAA), health and social care trusts (Northern Ireland), Salvation Army, Migrant Help, Medaille Trust, Kalayaan, Barnardo's, Unseen, Tara Project (Scotland), NSPCC (CTAC), BAWSO, New Pathways and Refugee Council.

<sup>18</sup> Clause 49(2) of the Nationality and Borders Bill seeks to reduce the recovery period to 30 days.

<sup>19</sup> Section 52 MSA 2015 is supplemented by The Modern Slavery Act 2015 (Duty to Notify) Regulations 2015.

<sup>20</sup> For Q2 of 2021 there were a total of 910 'duty to notify' referrals. The top 3 victim nationalities were Albanian, Vietnam and the UK. Labour exploitation was by far the most prevalent (with 356 referrals compared with the second most prevalent form of criminal exploitation which totalled 148 referrals). Home Office UK Visa

quarterly statistics for NRM referrals of children and consenting adults are disaggregated into a number of categories including age group at exploitation (child or adult), location of exploitation (overseas, in the UK or a combination of both), responsible police force within the UK and police force responsible for investigation (further disaggregated between Wales, Scotland and Northern Ireland), exploitation type, gender of the victim, nationality of the victim and First Responder.<sup>21</sup> Prior to January 2020, 'County Lines cases' (a term used to describe gangs and criminal networks who are known to exploit children and vulnerable adults to move illegal drugs into or out of different areas within the UK) were classified as a sub-type of labour exploitation but are now 'flagged' and identified separately within the statistics. The Home Office records the number of positive and negative reasonable and conclusive grounds decisions disaggregated by age group and the average number of days it takes to reach a conclusive grounds decision (currently 435 median and 535 mean days). This data is recorded under the umbrella of 'victims of modern slavery' and is not disaggregated between 'victims of human trafficking' and 'victims of modern slavery'. No data is collected or published relating to the perpetrator(s).

There is a significant number and range of stakeholders involved in anti-trafficking efforts across the UK. For law enforcement efforts, police forces (including Police Scotland and the Police Service Northern Ireland) and the National Crime Agency are responsible for investigating criminal offences, the GLAA has power to investigate labour market exploitation, the Home Office's UK Border Force carries out immigration control at the borders and Immigration Enforcement ensures compliance with immigration laws. Criminal prosecutions are led by the Crown Prosecution Service England and Wales, the Crown Office and Procurator Fiscal Service in Scotland and the Public Prosecution Service in Northern Ireland.<sup>22</sup> In 2017 the role of Director of Labour Market Enforcement was created to tackle labour exploitation. The Independent Chief Inspector of Borders and Immigration monitors and reports on the efficiency and effectiveness of the Home Office's immigration, asylum, nationality and customs functions.

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and Immigration made 394 referrals, followed by the UK Border force who made 74 referrals and the Metropolitan Police who made 54 referrals.

<sup>21</sup> For Q2 of 2021 there were a total of 3140 child and consenting adult referrals of which 1564 were adults (398 female and 1166 male), 1357 were children (275 female and 1080 male) and 219 whose age wasn't known (44 female and 175 male). Labour exploitation was the most prevalent form of exploitation for adult males totalling 462 and sexual exploitation for adult females totalling 139. For children, criminal exploitation was the most prevalent form for males totalling 607 and sexual exploitation for females totalling 114. From the combined total of child and adult referrals the most prevalent nationality of the victim was the UK totalling 1030 (of whom 760 were children), followed by Albania at 545 and Vietnam at 329. The police made the largest number of referrals followed by the Home Office UK Visa and Immigration.

<sup>22</sup> According to data recorded within the 2020 UK Annual Report on Modern Slavery [at page 47-49] in relation to modern slavery offences, in 2019 the CPS charged 239 defendants and 251 defendants were convicted. In Scotland in 2019 the COPFS charged 4 defendants and 1 defendant was convicted. In Northern Ireland the PPS prosecuted 4 defendants in 2018/19 but no-one in 2019/20. There were zero convictions in 2018/19 and 2 convictions in 2019/20.

In government, the Home Office and its Modern Slavery Unit occupies the central role in determining anti-trafficking strategy and policy. Within the Home Office sits the NRM's SCA responsible for identification of victims, the UK Visa and Immigration responsible for asylum determination and immigration decisions and the Parliamentary under Secretary of State Minister for Safeguarding who has responsibility for modern slavery.

The Inter-Departmental Ministerial Group on Modern Slavery was created in 2005 to oversee the UK's modern slavery efforts. It brought together the UK, Scottish and Welsh Governments and the Northern Ireland Executive and between 2012 and 2016 published the UK's Annual Report on Modern Slavery. Across the UK there are active cross-party parliamentary groups that provide a forum for MPs and Peers to discuss the nature and scale of modern slavery in the UK.<sup>23</sup>

In 2016 the Modern Slavery Strategy and Implementation Group (MSSIG) was established with a view to the Home Office engaging with civil society stakeholders as a form for information sharing and discussion.

The government funds certain specialist civil society organisations to delivery services to survivors. The Modern Slavery Victim Care and Coordination Contract funds the Salvation Army to deliver the NRM reflection and recovery accommodation and support services to adults, who in turn subcontracts Migrant Help to deliver some of these services. Local authority children's services are responsible for accommodating and supporting child victims. The Scottish government funds TARA (Trafficking Awareness Raising Alliance) to deliver specialist services to victims of commercial sexual exploitation and Migrant Help to support all other adult victims. The Northern Ireland Department of Justice contracts Migrant Help to support male victims and Women's Aid to support female victims. Barnardo's is funded to run the specialist Independent Child Trafficking Guardian service. In response to increasing numbers of UK child victims of county lines exploitation, the Home Office provides funding to St Giles Trust and Young People's Advocates to provide specialist services.

The UK's anti-trafficking efforts are bolstered and informed by an exceptionally active civil society across NGOs, academia and the legal sector. Specialist NGOs have been providing support for survivors and campaigning for many years. Their breadth of expertise and insight into trafficking has resulted in some NGOs being formally recognised as First Responders able to refer into the NRM. In 2009 the Anti-Trafficking Monitoring Group, a coalition of leading anti-trafficking NGOs, was established to monitor the UK's

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<sup>23</sup> The All-Party Parliamentary Group (APPG) on Human Trafficking and Modern Slavery (housed within the Human Trafficking Foundation), the All-Party Group on Human Trafficking in Northern Ireland, the Cross-Party Group on Human Trafficking in Scotland and the Cross-Party Group on Human Trafficking for Wales. Wales has also established an Anti-Slavery Leadership Group and appointed an Anti-Slavery Coordinator.

implementation of European anti-trafficking legislation and to coordinate advocacy to hold the UK to account.<sup>24</sup>

A number of UK universities have specialist anti-trafficking research centres.<sup>25</sup> In 2019, £10m of government funding was awarded to launch the Modern Slavery and Human Rights Policy and Evidence Centre with the objective of enhancing understanding of modern slavery in order to transform the effectiveness of related laws and policies.<sup>26</sup>

Lawyers and the courts have played a significant role in developing domestic law and policy. The European Court of Human Rights has confirmed the scope and extent of positive obligations arising from Article 4 ECHR, which has shaped domestic jurisprudence.<sup>27</sup> Domestic courts have also played an important role in shaping law and policy. The following are non-exhaustive examples of significant case law; *Atamewan v SSHD*<sup>28</sup> led to amended guidance ensuring the proper identification of historic victims of trafficking; *L and Others v the Children's Commissioner*<sup>29</sup> resulted in new CPS guidance on the non-punishment of victims provisions in ECAT and the EU Directive; *Hounga v Allen*<sup>30</sup> enabled some employment law rights to be applicable to irregular migrants in so far as the Supreme Court held that the doctrine of illegality arising from the employment of an 'illegal migrant' did not defeat a claim of employment discrimination brought by the same trafficked migrant worker; in *Benkharbouche and Janah*<sup>31</sup> the Supreme Court found the application of state immunity to employment claims brought by members of embassy staff in the UK to be incompatible with Article 6 ECHR; in *PK (Ghana) v SSHD*<sup>32</sup> the court declared the government's policy guidance relating to the grant of discretionary leave for victims of trafficking to be unlawful for failure to give effect to the objectives of Article 14(1)(a) ECAT;

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<sup>24</sup> Anti-Slavery International, Ashiana Sheffield, Bawso, ECPAT UK, Focus on Labour Exploitation (FLEX), Helen Bamber Foundation, Kalayaan, Law Centre (NI), the Snowdrop Project, the TARA service, JustRight Scotland, UNICEF UK, the Children's Law Centre, Flourish Northern Ireland, the East European Resource Centre, the Scottish Refugee Council and Hope for Justice. It also works closely with the Human Trafficking Foundation.

<sup>25</sup> For example, Nottingham University's Right's Lab, Hull University's Wilberforce Institute, Liverpool University's Centre for the Study of International Slavery and Queen Mary's Centre for the Study of Modern Slavery and The Bakhita Centre for Research on Slavery, Exploitation and Abuse.

<sup>26</sup> Funding was awarded by UK Research and Innovation from the Strategic Prioritise Fund for a five-year period until the end of the financial year 2023/24.

<sup>27</sup> *Siliadin v France* [2005] ECHR 545, *C.N v the U.K* [2012] ECHR 1911, *Rantsev v Cyprus and Russia* [2010] ECHR 22, *Chowdury and Others v Greece* [2017] ECHR 300, *VCL and AN v U.K* (2021) (application no.77587/12).

<sup>28</sup> *Atamewan v Secretary of State for the Home Department* [2013] EWHC 2727 (Admin).

<sup>29</sup> *R (L & Ors) v The Children's Commissioner for England* [2013] EWCA Crim 991.

<sup>30</sup> *Hounga v Allen* [2014] UKSC 47.

<sup>31</sup> *Secretary of State for Foreign and Commonwealth Affairs v Benkharbouche and Secretary of State for Foreign and Commonwealth Affairs and Libya v Janah* [2017] UKSC 62.

<sup>32</sup> *R (PK (Ghana)) v Secretary of State for the Home Department* [2018] EWCA Civ 98.

in *K and AM v SSHD*<sup>33</sup> the court found the reduction of 42% in subsistence rates for victims of trafficking to be unlawful.

The Government has funded a number of programmes to improve performance and increase capability in anti-trafficking efforts. The Home Office provided £12m to the Police Transformation Fund and the Modern Slavery and Organised Immigration Crime Unit between 2017-2020 and an additional £2m until 2021. In 2016 the UK provided £2.2m for a Child Trafficking Protection Fund.<sup>34</sup> Internationally, alongside the £11m from the Home Office's Modern Slavery Innovation Fund, the UK's Overseas Development Assistance committed £200m to fight slavery. The UK committed £20m to the Global Fund to End Modern Slavery, £12m to a UK Aid Connect programme led by World Vision and £13m to the World in Freedom Programme. However, in response to the 'economic emergency' caused by Covid-19, in November 2020 the Lord Chancellor announced considerable cuts to the overseas aid budget. The impact of these cuts on anti-trafficking programmes is not yet known.<sup>35</sup>

The government established the Office of IASC to fulfil the role of national rapporteur<sup>36</sup> (albeit the question of independence has been subject to debate).<sup>37</sup> The IASC has UK-wide remit to encourage good practice in the prevention, detection, investigation and prosecution of modern slavery offences and the identification of victims. In 2019 a separate role of Migration and Modern Slavery International Envoy was created to engage with international partners on migration policies.<sup>38</sup>

There are some distinct features of the UK's political landscape that negatively impact and undermine anti-trafficking structures. Firstly, anti-migrant rhetoric and the prioritisation of immigration policy has led to successive immigration laws and policies creating a 'hostile environment' designed to impose poverty and hardship on migrants to incentivise their departure from the UK and to deter future migrants from entering the UK. These measures are imposed on the devolved nations due to the UK's system of devolution retaining immigration as an area of competence reserved to Westminster. In cases of transnational human trafficking the inherent link between migration and trafficking means that immigration laws and policies cut across anti-trafficking policies. An example of this overlap is the 2012 change to the immigration rules that prevented overseas domestic workers from changing

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<sup>33</sup> R (K and AM) v Secretary of State for the Home Department [2018] EWHC 2951.

<sup>34</sup> University of Bedfordshire and the Home Office, Evaluation of the Child Trafficking Protection Fund, October 2020.

<sup>35</sup> See, House of Commons International Development sub-committee on the work of the Independent Commission for Aid Impact, Oral evidence from the IASC, 30 June 2021; <https://committees.parliament.uk/oralevidence/2468/html/>

<sup>36</sup> As required by Article 19 of the EU Directive 2011/36/EU and Article 29(4) of ECAT.

<sup>37</sup> See, Independent Anti-Slavery Commissioner, Letter of Resignation (4 May 2018) "*At times independence has felt somewhat discretionary from the Home Office, rather than legally bestowed*".

<sup>38</sup> UK Government Response to the Independent Review of the MSA 2015 (2019) [at paragraph 15].

employer. This change was introduced to align this group of migrant workers with the UK's wider immigration priority of increasing the skill but reducing the number of incoming migrants. These changes have been heavily criticised for exacerbating the vulnerability of this group to labour exploitation and abuse thereby undermining anti-trafficking efforts. Secondly, 'Brexit' was underpinned by a desire to end free movement and regain control of national borders. Yet it has the potential to negatively impact domestic anti-trafficking efforts in relation to intelligence sharing and joint criminal investigations and prosecutions with European partners. The full impact of Brexit is as yet unknown.

The UK's anti-trafficking efforts have been scrutinised by external bodies over a number of years. In 2015, 'the "3P" Anti-Trafficking Policy Index' awarded the UK the highest ratings and ranked its policies within the top 3 countries globally. The 2018 'Global Slavery Index' rated the UK's Government Response as 'BBB' (a higher score was prevented by certain policies that hinder the UK's response to modern slavery). Despite this, overall, the UK was ranked in the top 3 countries globally (behind the Netherlands and the U.S.). Since 2001, the UK has consistently been ranked as Tier 1 in US Department of State's annual TiP reports.

# Determinants of anti-trafficking efforts

The key determinants of anti-trafficking law and policy in the UK are a combination of factors and actors that have, at different stages, played an important role in influencing efforts. These determinants have been identified through the literature review, through an analysis of domestic law, policy and grey literature, and through the views of interviewees. Although the views of the interviewees are based on perception and speculation arising from their experiences and the evidence base as a whole is not capable of definitively identifying the factors that drove certain government efforts, a pattern has emerged in the consistency with which certain determinants have been attributed to triggering, informing and shaping the government's response.

## Particulars of determinants by type of response

### Prosecution

**International and regional legal frameworks** have been the most influential determinant behind the enactment of domestic criminal legislation designed to prosecute and punish perpetrators. On an international level, the Palermo Protocol was responsible for defining human trafficking as a transnational organised crime issue that resulted in widespread consensus for creating a criminal justice framework response. Broad and Turnbull notes that that the umbrella Convention against Transnational Organised Crime firmly shaped the framework for national responses.<sup>39</sup> This is reflected in the UK's initial anti-trafficking legislative framework that focussed exclusively on a prosecution response.<sup>40</sup> On a regional level, Chapter IV of ECAT and Articles 2 to 10 of the EU Directive contain criminal justice obligations and it was the case of *CN v U.K.* before the European Court of Human Rights that prompted the UK to enact s.71 Coroners and Justice Act 2009 to criminalise domestic servitude.<sup>41</sup>

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<sup>39</sup> Rose Broad and Nick Turnbull, "From Human Trafficking to Modern Slavery: The Development of Anti-Trafficking Policy in the UK (22 March 2018).

<sup>40</sup> Section 59A Sexual Offences Act 2003 criminalised trafficking for the purposes of sexual exploitation (applicable to England, Wales and Northern Ireland, in Scotland the equivalent provision was s.22 Criminal Justice (Scotland) Act 2003), s.4 Asylum and Immigration (Treatment of claimants, etc.) Act 2004 criminalised trafficking for exploitation including forced labour, slavery and organ harvesting (applied to England, Wales, Scotland and Northern Ireland), and s. 71 Coroners and Justice Act 2009 criminalised slavery, servitude and forced and compulsory labour (applicable to England, Wales and Northern Ireland and in Scotland the equivalent provision was s.47 Criminal Justice and Licencing (Scotland) Act 2010).

<sup>41</sup> *CN v U.K.* [2012] ECHR 1911. The applicant lodged her claim with the European Court of Human Rights on 24 January 2008. The court found that the investigation into the applicant's complaints of domestic servitude were ineffective due to an absence of domestic legislation criminalising such treatment. The UK enacted s.71 of

It is evident that the obligations within **international and regional legal frameworks**, combined with **individual political will** from Theresa May seeking to “*simplify legislation, toughen sentences for slave drivers, and enable the courts to restrict activity where individuals may be at risk*”<sup>42</sup> impelled the introduction of the draft Modern Slavery Bill.<sup>43</sup> Mirroring the Palermo Protocol’s political consensus of framing trafficking as a transnational criminal justice issue, the Modern Slavery Bill received **cross-party support** through its politically uncontroversial aims of consolidating existing laws to tackle organised crime and punish perpetrators. Furthermore, the prospect of elevating the **international reputation of the UK** as a world-leader setting the global bench mark in tackling human trafficking was a contributing and strengthening factor behind the **cross-party support** for the Modern Slavery Bill.

From the other perspective, **regional legal frameworks**, namely ECAT and the EU Directive<sup>44</sup> combined with the **role of lawyers and the courts** enforcing these obligations,<sup>45</sup> influenced the UK to introduce s.45 of the MSA 2015 to **prevent a victim from being prosecuted** for committing an offence under compulsion, subject to certain conditions. Concern from **external monitoring bodies**, in particular GRETA who considered that s.45 applies a narrow interpretation to the non-punishment principle, has not motivated the government to widen its scope.<sup>46</sup> The government cited the **risk of abuse of the system** by opportunistic criminals seeking to evade justice as its motivation for retaining the provision in its existing form.<sup>47</sup>

In terms of determinants behind the *implementation and enforcement* of domestic criminal legislation, the identification of **tangible results through prosecution efforts** to justify the **allocation of resources and funding** was considered to be an influential factor by a number of interviewees. When compared to other anti-trafficking responses, prosecution is considered to be more attractive to the government due to the ability to quantify and publicise outcomes.

On the other hand, general constraints in **resource and funding allocation** were identified by law enforcement and the criminal justice stakeholders as hindering prosecution efforts

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the Coroners and Justice Act 2009 on 6 April 2010. The Draft Modern Slavery Bill ECHR Memorandum (December 2013) confirms [at paragraph 6] that s.71 was enacted to address the criticisms in *CN v U.K.*

<sup>42</sup> Theresa May, Written Ministerial Statement to Parliament; Modern Slavery (16 December 2013).

<sup>43</sup> The determinants of international and regional legal frameworks and individual political will (from Jenny Marra MSP and Lord Morrow MLA) are equally applicable to the introduction of the Human Trafficking and Exploitation (Scotland) Act 2015 and Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Northern Ireland) Act 2015.

<sup>44</sup> Article 26 of ECAT and Recital 14 and Article 8 EU Directive 2011/36/EU.

<sup>45</sup> See for example, *R (L & Ors) v The Children's Commissioner for England & Anor* [2013] EWCA Crim 991.

<sup>46</sup> GRETA’s Second Evaluation Round of the UK (2016) [at paragraph 287].

<sup>47</sup> Reply from the UK to the Questionnaire for the evaluation of the implementation of ECAT (June 2020) [at page 36].

due to the costly nature and complexity of prosecuting transnational organised crime that, even if successful, rarely reduces the overall threat level.

## Protection

**Regional legal frameworks**, specifically ECAT and the EU Directive, were fundamentally important determinants behind improvements in domestic protection efforts.

ECAT required the UK to formalise the identification of victims which led to the creation of the NRM in April 2009. However, the influence exerted by ECAT on the government to improve its protection efforts is not absolute.<sup>48</sup> Despite the **individual political will** behind the introduction of the Modern Slavery Bill, the government resisted calls to place the NRM onto statutory footing or to further expand the scope of victim support.<sup>49</sup>

Lobbying from **civil society organisations and survivor networks** and other individuals such as Lord McColl in his Private Member's Bill<sup>50</sup> for survivors to be granted extended leave to remain has failed to influence the government, who remains staunch in its opposition to these requests. This resistance is directly attributable to the **prioritisation of immigration policy** and the government's motivation not to provide assistance in excess of the minimum level required by international obligations for fear of creating a 'pull factor' which would undermine its higher priority of controlling migration. Concurringly, Broad and Turnbull observed that *"systems of victim protection in the UK were developed while balancing the targets of the then United Kingdom Border Agency (UKBA) regarding the removal of undocumented migrants leading to criticism of their level of commitment to victim care"*.<sup>51</sup>

Similarly, **damage to the international reputation of the UK** is not a determinant that has influenced the government to improve victim protection measures even when criticism from **external monitoring bodies** related to child victims going missing from care and being re-trafficked.<sup>52</sup> It is possible that the government is unperturbed by such external criticism based on the overall high regard in which its anti-trafficking efforts are viewed when compared to other countries and the associated low risk of being downgraded in its international

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<sup>48</sup> This applies to England and Wales. The provision of assistance to victims of human trafficking is a devolved issue and both Scotland and Northern Ireland opted to place the provision of assistance and support to victims within their primary legislation: s.9 and 10 of the Human Trafficking and Exploitation (Scotland) Act 2015 and Part 3 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

<sup>49</sup> Lord Rosser introduced amendments to implement a 'best interests of the victim' duty, to place victim support and assistance on statutory footing so that victims across the UK had the same guaranteed rights and access to support, and to place the NRM on statutory footing. Baroness Young introduced an amendment focussed on civil remedies accessible to victims of trafficking. None of these amendments succeeded.

<sup>50</sup> Human Trafficking and Exploitation (Further Provisions and Support for Victims).

<sup>51</sup> Rose Broad and Nick Turnbull, "From Human Trafficking to Modern Slavery: The Development of Anti-Trafficking Policy in the UK (22 March 2018).

<sup>52</sup> GRETA Report concerning the implementation of ECAT, Second Evaluation Round (2016) [at paragraphs 195, 198].

rankings. A conflicting determinant of higher priority than damage to international reputation is the **allocation of resources and funding** that dissuades the government from improving its protection efforts. An example of this is Barnardo's Pilot on Safe Accommodation that sought to address the enduring concerns of child victims going missing from care.<sup>53</sup> Although successful, the project was discontinued as the government deemed it too costly.<sup>54</sup>

Lobbying by **civil society organisations** did not influence the government to introduce longer-term needs-based support for survivors.<sup>55</sup> **Lawyers and the courts**, in applying **regional legal frameworks** to enforce victim's rights enshrined in ECAT, ultimately compelled government action. The case of *NN and LP v SSHD*<sup>56</sup> resulted in the introduction of a new process and guidance to assess the support needs of survivors beyond the previous NRM exit timescales.<sup>57</sup>

## Prevention

The MSA 2015 introduced new preventative measures; Slavery and Trafficking Risk Orders and Prevention Orders.<sup>58</sup> These measures reveal a clear **focus on a criminal justice response** rather than a victim protection response, which is more evident in comparable measures.<sup>59</sup>

Conversely, one interviewee identified a shift in the government's strategy to domestic prevention action from initially being offender-focussed in preventing the commission of trafficking-related offences, to now being victim-focussed in preventing individuals from becoming victims. It was suggested that this shift was motivated by a need to **record measurable outcomes for resource and funding allocation reasons**.

In general, interviewees found it difficult to clearly identify the UK's prevention strategy. The most cited example of the government's prevention response was international aid funding

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<sup>53</sup> Barnardo's Safe Accommodation Project for sexually exploited and trafficked young people (2011-2013). The Project was evaluated by Lucie Shuker of the University of Bedfordshire (May 2013).

<sup>54</sup> GRETA Reports concerning the implementation of ECAT, First Evaluation Round (2012) [at paragraph 240, 248], Second Evaluation Round (2016) [at paragraph 195, 198].

<sup>55</sup> See section below "Focus on Key improvement No: 2: The Recovery Needs Assessment Guidance" detailing unsuccessful attempts from civil society organisations and survivor networks as well as government committees and external monitoring bodies in lobbying the government to create a needs-based system of assessing the longer-term support needs of survivors.

<sup>56</sup> R (NN and LP) v Secretary of State for the Home Department [2019] EWHC 766 (Admin).

<sup>57</sup> Home Office, Recovery Needs Assessment Guidance (2019).

<sup>58</sup> Part 2, Modern Slavery Act 2015. See also, Part 4 Human Trafficking and Exploitation (Scotland) Act 2015 and the prevention order provision at s.11 Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Northern Ireland) Act 2015.

<sup>59</sup> See for example Female Genital Mutation Protection Orders introduced into the Female Genital Mutilation Act 2003 by s.73 of the Serious Crime Act 2015 or Forced Marriage Protection Orders introduced by the Forced Marriage (Civil Protection) Act 2007 into s.63A(1) of the Family Law Act 1996.

of overseas trafficking programmes to which two key determinants were attributed; the **prioritisation of immigration policy** and the **prioritisation of economic policy**.

The **prioritisation of immigration policy** has resulted in human trafficking being framed in an immigration context thereby directing prevention efforts to take place 'upstream' in known source countries. A large number of interviewees concurred that prevention efforts were focussed more on preventing people from coming to the UK rather than preventing exploitation or remedying the structural deficiencies that facilitate trafficking. This is interlinked with the **prioritisation of economic policy** which, according to some interviewees, results in a calculation of prevention efforts overseas being viewed as less costly than protection efforts for victims identified in the UK. Some interviewees believed that the associated difficulties in being able to **identify and quantify the tangible results** of prevention efforts hinders the **allocation of resources and funding**. The **economic consequences of Covid-19** and the recent announcement of significant cuts to international aid is a factor that will undoubtedly hinder prevention work.

## Partnership

The **sustained individual political will** of Theresa May and her influence as Home Secretary and latterly Prime Minister in being able to **direct the allocation of resources and funding** contributed to an **enhanced multi-agency response** to human trafficking across stakeholders and government departments. For example, the creation of the Inter-Departmental Ministerial Group on Human Trafficking, the Prime Minister's Task Force, the Modern Slavery Strategy Board<sup>60</sup> and the Modern Slavery Strategy and Implementation Group ('MSSIG'). The effectiveness of MSSIG has been varied.<sup>61</sup>

In relation to building global partnerships, **political will** combined with the motivation to elevate the **international reputation of the UK** inspired efforts to rally international commitment, including a 2017 Call to Action to End Forced Labour, Modern Slavery and Human Trafficking at the UN General Assembly.

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<sup>60</sup> Chaired by the Minister for Preventing Abuse, Exploitation and Crime and composed of representatives of the Home Office (the Director General of the Crime, Policing and Fire Group and Modern Slavery Senior Responsible Owner, the Director of Safeguarding, the Head of the Modern Slavery Unit and the Director of Serious and Organised Crime), the National Policing Lead on Modern Slavery, the GLA Chief Executive, the Director of Organised Crime of the NCA, the Crown Prosecution Service and the Independent Anti-Slavery Commissioner.

<sup>61</sup> Letter from a number of NGO members of MSSIG to the Home Office (4 November 2019) highlighting concerns related to the lack of consultation with specialist victim support organisations in the development of the RNA Guidance.  
<https://static1.squarespace.com/static/599abfb4e6f2e19ff048494f/t/5dd69f50a8c5393bf2ab8ad3/1574346577049/Letter+MSU+RNA+4.11.19.pdf>

## Particulars of determinant by form of exploitation

### Trafficking for the purpose of sexual exploitation

Traditionally, global anti-trafficking efforts have focussed predominantly on sexual exploitation and the UK has been no exception to this pattern. As observed by Broad and Turnbull, during the early development of policy in the UK, the implicit question treated i.e., the policy frame, was limited to sexual exploitation.<sup>62</sup>

One interviewee from a support organisation considered that the long-standing focus on sexual exploitation was influenced by **U.S. faith-based organisations** and the **motivation to eradicate prostitution**. The role of **religious morality** and the desire to **'rescue' victims** were identified by a number of interviewees as potential determinants that attracted **political will** to respond to sexual exploitation. **Comparatively higher political will** behind tackling sexual exploitation has been apparent in the government's response.<sup>63</sup> For example, the government has enacted legal provisions to discourage demand by criminalising the purchase of sexual services<sup>64</sup> but has been resistant to enact measures to discourage demand for cheap goods and services that are the product of labour exploitation.<sup>65</sup>

**Policing priorities** and the **comparative ease of identifying** sexual exploitation were identified by interviewees as being responsible for the **higher number of NRM referrals** for this type of exploitation, which in turn has determined the **level of resource allocation** and **priority afforded to tackling sexual exploitation based on its reported prevalence**.

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<sup>62</sup> Rose Broad and Nick Turnbull, "From Human Trafficking to Modern Slavery: The Development of Anti-Trafficking Policy in the UK (22 March 2018).

<sup>63</sup> GRETA Reports concerning the implementation of ECAT, First Evaluation Round (2012) [at page 7] "GRETA also notes that the measures to discourage demand have so far focused on sexual exploitation and considers that more efforts should be made to discourage demand for the services of trafficked persons for the purpose of domestic servitude and labour exploitation".

<sup>64</sup> Section 53A of the Sexual Offence Act 2003 (criminalises the purchase of sexual services from a prostitute subjected to force, threats, coercion or deception) Section 64A of the Sexual Offences (Northern Ireland) Order 2008 (criminalises the purchase of sexual services), s.1 of the Prostitution (Public Places) (Scotland) Act 2007 (criminalises soliciting or loitering in a public place to purchase sexual services).

<sup>65</sup> See, Government response to New Clause 14 proposed amendment to the Modern Slavery Bill that would introduce measures to ban the importation of products into the UK produced through forced labour. HC Deb 4 November 2014, vol 587, col 689. Karen Bradley's response to New Clause 14, "It would simply not be feasible for UK agencies to police the import of goods on the basis of whether they had been produced using slave labour. We need those trading with companies in other jurisdictions to apply due diligence and take decisive action where they believe that slave labour is being used...".

## Trafficking for the purpose of labour exploitation (e.g. forced labour and domestic work)

Trafficking for the purpose of labour exploitation is multi-faceted and has been linked to different determinants that have informed and influenced government response. According to Broad and Turnbull, the early policy response to labour exploitation was dominated by a **migration-crime-security frame** rather than an understanding of employment and exploitation associated with migration.<sup>66</sup> Similarly, some interviewees referred to the government's anti-migrant rhetoric arising from its **immigration priorities** as a factor that has deterred its response to this form of exploitation. Interviewees identified the government's inherent scepticism of viewing victims of labour exploitation primarily as illegal economic migrants as an impediment to its identification and protection response.

In the UK context there are few examples of a **single or isolated incident** being a determinant for government action. However, a number of interviewees identified the **2004 Morecambe Bay tragedy** in which at least 23 Chinese victims of trafficking, who were picking cockles for a gangmaster, were drowned. This incident prompted the establishment of the then-Gangmaster and Licencing Authority (now the GLAA) in April 2005 to operate a statutory licensing scheme to regulate businesses that supply workers to the agriculture and food industries.<sup>67</sup>

Arguably one of the most contentious legislative changes in recent years relates to Overseas Domestic Workers ('ODW'). The ODW visa was introduced in 1998 to implement safeguards by permitting a change in employer for a workforce considered to be at heightened risk of abuse. The ILO and UN Special Rapporteur cited this visa as an example of good practice.<sup>68</sup> However, changes to the immigration rules in 2012 introduced a 'tied visa' which prohibited ODWs from changing employer. Following outcry from specialist NGOs<sup>69</sup> and parliamentarians<sup>70</sup> that cited evidence of increased exploitation arising from

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<sup>66</sup> Rose Broad and Nick Turnbull, "From Human Trafficking to Modern Slavery: The Development of Anti-Trafficking Policy in the UK (22 March 2018).

<sup>67</sup> A Private Member's Bill had been introduced by Labour MP Jim Sheridan prior to the Morecambe Bay tragedy however the tragedy triggered government support and priority resulting in the Gangmasters (Licencing) Act 2004.

<sup>68</sup> International Labour Organization, Multilateral Framework on Labour Migration: Nonbinding principles and guidelines for a rights-based approach to labour migration (1 January 2006) [at page 67, paragraph 82]. See also, Jorge Bustamante, Special Rapporteur on the Human Rights of Migrants, Report on the Mission to the UK and Northern Ireland (June 2009) [at paragraph 60] "*The Special Rapporteur notes with appreciation that the right to change employer has been instrumental in facilitating the escape of migrant domestic workers from exploitative and abusive situations. This is because they know they can receive support and assistance and still seek work with another employer without facing the risk of being removed from the United Kingdom*".

<sup>69</sup> Kalayaan, 'Slavery by Another Name: The tied migrant domestic worker visa', (May 2013).

<sup>70</sup> Parliamentary Joint Select Committee of Both Houses, Report on the Draft Modern Slavery Bill (3 April 2014) [at paragraph 5] "*In the case of the domestic worker's visa, policy changes have unintentionally strengthened*

the 'tied visa', the government commissioned an independent review. The review recommended that all ODWs should retain the right to change employer.<sup>71</sup> In 2016 the government reintroduced the right of ODWs to change employer but required that any such change take place within the original 6-month period for which the visa was granted.

The government's action and response, analysed alongside the views of certain interviewees, exposes specific determinants. Foremost behind the 2012 changes was the **prioritisation of immigration policy**. The government's policy objective was to restrict the numbers yet raise the skill level of migrant workers entering the UK.<sup>72</sup> In his review, James Ewins identified the apparent conflict between the **moral case for protecting a vulnerable group of workers** versus the government's characterisation of the safeguards permitting ODWs to obtain leave to remain to escape abuse as a **migration issue** (in so far as ODWs formed part of the UK's net migration statistics).<sup>73</sup> Eventually, the government relented on the **moral argument** for allowing ODWs to change employer but did so in such a way that protected the **overarching immigration policy objective of preventing ODWs from accessing a route to settlement in the UK**. Interestingly, the UK being heralded as a champion of anti-trafficking efforts to boost its **international reputation** was not a determinant in motivating the government to revert to the pre-2012 visa that had been lauded as good practice by the ILO and the Special Rapporteur. This strongly suggests that in the hierarchy of determinants, the **prioritisation of immigration policy** is dominant.

The Seasonal Worker Pilot is a more recent example of the **prioritisation of immigration control to the detriment of the protection of vulnerable workers**.<sup>74</sup> The arbitrary cap placed on visas designed to control the numbers of low-skilled migrant workers entering the UK fails to meet the level of industry demand, which creates opportunity for traffickers to fill the gap with illegal workers placed at increased risk of labour exploitation and abuse. Despite concerns being voiced that the Pilot will facilitate labour exploitation, the government has stood firm in its **priority to control migration flow into the UK**.

In relation to corporate responsibility and the introduction of supply chain provisions in the MSA 2015, a different set of determinants have been identified. Firstly, the **international and regional legal frameworks** obligated the UK to introduce measures to establish corporate

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*the hand of the slave master against the victim of slavery. The moral case for revisiting this issue is urgent and overwhelming*".

<sup>71</sup> James Ewins, "Independent Review of the Overseas Domestic Workers Visa", (15 December 2015) [at paragraph 10].

<sup>72</sup> Home Office, Consultation on Employment-related settlement, Tier 5 and Overseas Domestic Workers, (June 2011) [at paragraph 7.4].

<sup>73</sup> James Ewins, "Independent Review of the Overseas Domestic Workers Visa", (15 December 2015) [at paragraphs 172-175].

<sup>74</sup> Department for Environment Food and Rural Affairs and Home Office Seasonal Worker Pilot <https://www.gov.uk/government/publications/seasonal-workers-pilot-request-for-information/seasonal-workers-pilot-request-for-information>

liability.<sup>75</sup> Secondly, in 2014 the **media exposed the existence of labour exploitation** in prawn supply chains of UK supermarkets.<sup>76</sup> This **media exposé** was referenced throughout **parliamentary debates** on the Modern Slavery Bill which, when combined with the effective and unified **lobbying from civil society organisations alongside the business sector**, pressured the government to relent on its initial refusal to introduce supply chain provisions. Interviewees linked the government's resistance to these provisions to its **economic policies** and desire to be seen as pro-business and anti-regulation. However, the force of **businesses lobbying** for these provisions in order to create a level playing field proved to be highly influential. In a volte-face of position, the government adopted the supply chain provisions as an opportunity to elevate its **international reputation**.

### Trafficking for the purpose of forced criminality (e.g. drug cultivation or trafficking, theft)

Awareness of trafficking for the purposes of forced criminality has gained prevalence in recent years as a result of 'County Lines' cases of child criminal exploitation being referred into the NRM.<sup>77</sup> Interviewees were unable to identify specific determinants behind the government's response to this type of trafficking. However, it was repeatedly observed that the inclusion of **increasing numbers of British national victims** in the modern slavery narrative may **hinder** the government's approach of **viewing trafficking through an immigration lens** to justify the introduction of tougher immigration and border controls. Other interviewees also questioned whether the 'County Lines' cases may compel the government to engage with the complexities of exploitation, reconsider the interplay between a victim being a perpetrator and vice versa and challenge the narrative of the 'deserving' and 'undeserving' victim evident in anti-trafficking responses.

### Trafficking for other exploitative purposes (e.g. organ removal, forced begging, child, early and forced marriage, involvement in terrorist activities, enforced conscription)

The NRM statistics reveal that these forms of exploitation are not as prevalent in the UK. It is therefore more difficult to ascertain whether the determinants relative to these forms of exploitation differ from other, more prevalent forms of exploitation.

Nevertheless, a number of interviewees made observations that provide some insight.

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<sup>75</sup> Article 22 of ECAT and Articles 5 and 6 EU Directive 2011/36/EU.

<sup>76</sup> The Guardian, "Revealed: Asian slave labour producing prawns for supermarkets in US, UK", "Walmart, Tesco and Costco among retailers responding to revelations of slavery in prawn supply chains" (10 June 2014).

<sup>77</sup> As well as through the recent European Court of Human Rights' judgment in *V.C.L. and A.N. v UK* [2021] ECHR 132.

The issue of **forced marriage** has been separated in term of legislation,<sup>78</sup> oversight<sup>79</sup> and the collection and publication of statistics.<sup>80</sup> Forced marriage is not listed as an 'exploitation type' for the purposes of data collection through the NRM. As a result of this **legislative and policy separation**, forced marriage is not viewed through the lens of human trafficking. It is not clear what determinants drove this separation.

In relation to **grooming and trafficking for the purposes of terrorism**, a couple of interviewees highlighted the case of Shamima Begum as being illustrative of the UK's abject refusal to accept terrorism-related cases as being human trafficking. Shamima Begum was one of three schoolgirls (aged 15 years old) who travelled to Syria in 2015 to align with the Islamic State group.<sup>81</sup> The recent Nationality and Borders Bill unequivocally illustrates the government's position in relation to suspected victims of trafficking that are or have been involved in terrorism-related activity. The Bill seeks to exclude this category of victims from being conclusively identified as such by the Competent Authority and disapply the protection from being removed from the UK during the recovery period.<sup>82</sup> The determinant behind this response is unclear but speculatively may be linked to the government's **domestic reputation or prioritisation of a criminal justice and immigration control response** in being seen to take a **zero-tolerance approach to terrorism**. Equally, it may be a **prioritisation of national security** that prevents the government from identifying young women like Shamima Begum as victims of exploitation for the purposes of terrorism to whom positive protective obligations would apply requiring reinstatement of her British Citizenship and return to the UK.

Finally, the example of **trafficking for the purposes of illegal adoption** was highlighted by a couple of interviewees as being a form of trafficking that is not properly recognised by the government or the family courts. This was attributable to a **lack of understanding of international legal instruments** and in particular the UNCRC's Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

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<sup>78</sup> Forced Marriage (Civil Protection) Act 2007.

<sup>79</sup> A separate Forced Marriage Unit exists within the Home Office.

<sup>80</sup> Home Office and Foreign, Commonwealth and Development Office, Forced Marriage Unit statistics.

<sup>81</sup> R (Begum) v Special Immigration Appeals Commission, R (Begum) v Secretary of State for the Home Department [2021] UKSC 7.

<sup>82</sup> Clause 51 Nationality and Borders Bill.

# Particulars of determinants according to trafficked persons' profile

## Sex, Gender Identity and Sexual Orientation

A number of interviewees considered that **assumptions** regarding certain victim profiles and a **narrative of 'the deserving' and 'the undeserving'** victim permeates anti-trafficking action and response in the UK.

The **gendered framing of certain international legal frameworks** such as the Palermo Protocol relating specifically to women and children, and the initial focus on trafficking for sexual exploitation, has contributed to domestic **assumptions** in relation to certain victim profiles. For example, interviewees noted that women and girls are more readily identified in situations of sexual exploitation than men. These assumptions have hindered the identification and protection of certain victims.

## Adult v Child

**International and domestic legal frameworks** such as the UNCRC, that informed the Children Act 1989, have created a **child protection framework** applicable to all children in the UK which means that the government's response to child victims of trafficking necessarily differs from their response to adult victims.

The **allocation of resources and funding** is a determinant behind the government's response to victim support that differs for adults and children. This involves an overlap with a victim's nationality and immigration status as these two characteristics dictate the process through which a victim accesses support (British nationals are not restricted by the NRM in the same way). For foreign adult victims of trafficking, the NRM acts as a gateway to accessing support services. Whereas for foreign children, whether or not they are referred into and identified by the NRM, local authority children's services are responsible for their care and protection pursuant to s.20(1) of the Children Act 1989. However due to the **division and conflict of budgetary responsibility** for the provision of support services based on the bright line cut off of 18 years (with the Home Office funding adult support and local authority children's services funding child support) the question of a young person's age has become a 'precedent fact' to the local authority exercising its statutory powers under the Children Act 1989.<sup>83</sup> In recent years this had led to an exponential increase in 'age dispute' litigation. The government's response to this situation and its rhetoric of the **system being**

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<sup>83</sup> R (A) v Croydon, R (M) v Lambeth [2009] UKSC 8.

abused by dishonest migrants,<sup>84</sup> reveals how the prioritisation of immigration control, fuelled and reinforced by **negative and sensationalist media coverage**,<sup>85</sup> has detracted the government from fulfilling its protection obligations towards vulnerable victims.

## Citizenship (Citizen v Non-Citizen) and migration status

Amongst interviewees there was almost universal consensus that the nationality and immigration status of a victim does influence a difference in government response.

The government continues to view trafficking through an immigration lens and use human trafficking as a vehicle through which it can justify the imposition of **tough immigration and border control measures**. Some interviewees linked this response to the current government's belief that it has a mandate from the electorate to adopt a tough stance on migration (arising from 'Brexit' and the general election in 2019) and in so doing supports its own political agenda of consolidating support to remain in power. These immigration policies create a **culture of mistrust and disbelief** in the government's response to foreign victims of trafficking that **hinders both its identification and protection response**. The Home Office's 'New Plan for Immigration' and the Nationality and Borders Bill intentionally **conflates trafficking and smuggling** and seeks to impose yet tougher immigration restrictions by reference to **an abuse of the system** by those dishonestly claiming to be victims of trafficking.<sup>86</sup> This rhetoric reinforces the **culture of mistrust and disbelief** that undermines victim identification and protection responses.

The government's traditional view of human trafficking being a transnational issue has been challenged in recent years due to the increasing number of British nationals being referred into the NRM for criminal and sexual exploitation. Interviewees were unable to identify any determinants behind the government's response to this changing landscape.

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<sup>84</sup> Home Office's 'New Plan for Immigration; Policy Statement' (March 2021) [at page 23] "*Adult claimants can take advantage of a fragmented system to pass themselves off as children, benefitting from additional protections properly reserved for the most vulnerable. As a result, many adults claim to be children... Conversely, we have examples of adults freely entering the UK care and school system, being accommodated and educated with vulnerable children.*"

<sup>85</sup> Daily Mail, "Mature beyond their years: More fears over real age of 'child migrants' coming from Calais as facial recognition analysis shows one may be as old as thirty eight" (18 October 2016).

<sup>86</sup> Home Office's 'New Plan for Immigration; Policy Statement' (March 2021) [at page 31] "*However, over recent years we have seen an alarming increase in the number of illegal migrants, including Foreign National Offenders (FNOs) and those who pose a national security risk to our country, seeking modern slavery referrals – enabling them to avoid immigration detention and frustrate removal from our country... Protection from removal, compounded by the fact the threshold for an RG decision is low, means release from immigration detention is very likely, resulting in rising abuse of the NRM*". See also reference within the Nationality and Borders Bill to individuals claiming to be victims of trafficking 'in bad faith'; Clause 51(1) and Clause 53(5).

## Race and ethnic origin and other criteria (e.g. education, employment, etc)

A determinant relevant to victims that is not listed but that has been identified as a reinforcing the government's prioritisation of immigration control is the victim's 'mode of entry into the UK'. The UK is experiencing increased numbers of migrants crossing the English Channel in small boats. Interviewees have observed that the heightened visibility of this mode of entry (compared with people being hidden in lorries) has fuelled the government's purposeful conflation of human trafficking and smuggling when it seeks to prioritise immigration policy and implement tougher restrictions.<sup>87</sup> This has been exacerbated by media coverage perpetuating the conflation between human trafficking and smuggling in which potential victims of trafficking are viewed in terms of statistics rather than as vulnerable individuals.<sup>88</sup> These factors exacerbate the culture of mistrust and disbelief and hinders the government's response to identifying and supporting victims.

## Particulars of determinants according to perpetrator profile

Sex, Gender Identity and Sexual Orientation, Race and ethnic origin, Citizenship (Citizen v Non-Citizen) and migration status, Legal entitles (e.g. companies) v natural persons, Organised criminal group v individual trafficker, Traffickers v consumers.

All interviewees found it difficult to identify whether determinants behind the government's response differ according to the profile of the perpetrator. This uncertainty was linked to a general lack of knowledge and understanding of perpetrator profiles. Although some statistics on perpetrators are collected from criminal convictions,<sup>89</sup> the numbers involved are paltry compared to the volume of data generated by NRM, which fails to collect or publish data on perpetrators.

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<sup>87</sup> See, Priti Patel, the Home Secretary's 'New Plan for Immigration; Policy Statement' (March 2021) and the Nationality and Borders Bill. See also, The Telegraph, "Priti Patel sanctions 'pushback' tactics to turn away migrant boats at sea" (9 September 2021).

<sup>88</sup> BBC News, "Channel crossings: Hundreds more migrants reach UK after record day" (5 August 2021), Daily Mail "Around 200 migrants reach UK today after record 1,000 yesterday - following Priti Patel's threat to withhold £54m from France unless officials stop smugglers" (7 September 2021), The Telegraph "Arriving channel migrants double as smuggling gangs use bigger boats to target smaller ports" (25 May 2021).

<sup>89</sup> Reply from the UK to the Questionnaire for the evaluation of the implementation of ECAT, Third Evaluation Round (30 June 2020) [at page 97].

An interviewee from the criminal justice system has experienced **gender-based assumptions** impacting on the identification and prosecution of women as perpetrators. She identified a widespread erroneous misconception that perpetrators are overwhelmingly men. This misconception is contrary to her experience of women being perpetrators, albeit in different roles or tiers of the trafficking chain.

The UK's approach to tackling trafficking in supply chains compared with its approach to tackling individual traffickers or organised criminal gangs is necessarily informed and influenced by different factors. For individual traffickers and organised criminal gangs, **international legal frameworks** form the foundation of the **domestic criminal justice and law enforcement response** designed to prosecute and punish. On the other hand, although a criminal justice response to corporate liability is required by **international legal frameworks**,<sup>90</sup> this approach would conflict with the conservative government's stance on being **pro-business**. Furthermore, pursuing a **criminal justice response** against companies could, in reality, **undermine anti-trafficking efforts** as it could **disincentivise businesses from undertaking proper audits and investigations** into their supply chains for fear of criminal punishment for revealing their findings. Therefore, action in relation to tackling modern slavery in supply chains has required a **willingness from the business sector to engage**. Indeed, it was **lobbying from a number of businesses** for the supply chain provisions to be incorporated into the MSA 2015 that ultimately persuaded the government. From the perspective of businesses, a determinant in seeking government action was the **creation of a level playing field between competitors** and the creation a mechanism to support their efforts to investigate modern slavery within their supply chains to **reduce the risk of reputation damage**.

Specifically in relation to the regulation of 'gangmasters' who supply workers to the agriculture and food industry, a number of interviewees identified the trigger of a **single and isolated event** in the **2004 Morecambe Bay tragedy** as prompting the establishment of the then-Gangmaster and Licencing Authority (now the GLAA) in April 2005.<sup>91</sup> In response to **civil society lobbying and some parliamentary support** during the Modern Slavery Bill debates, the government extended the remit and powers of the GLAA. However **insufficient allocation of resources and funding** has been identified as a factor that hinders its work.<sup>92</sup>

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<sup>90</sup> Article 22 of ECAT and Articles 5 and 6 EU Directive 2011/36/EU.

<sup>91</sup> A Private Member's Bill had been introduced by Labour MP Jim Sheridan prior to the Morecambe Bay tragedy however the tragedy triggered government support and priority resulting in the Gangmasters (Licencing) Act 2004.

<sup>92</sup> University of Nottingham Rights Lab, "Understanding risks of exploitation for vulnerable migrant workers in the UK during Covid-19" (2021) [at page 46].

The UK is still grappling with how to respond to the issue of consumers being implicated in exploitation and modern slavery.<sup>93</sup> It appears that the willingness to engage is context-specific. For example, the UK has been willing to adopt measures to discourage consumer demand for sexual services by criminalising the purchase of such services.<sup>94</sup> The **discourse and views surrounding prostitution** may have facilitated these measures being introduced. There has been significantly less political appetite to enact measures to discourage consumer demand for cheap goods and services that are the product of labour exploitation.<sup>95</sup>

It has not been possible to identify with precision what dissuades the UK from addressing consumer demand for cheap goods and services but it is possible that the **prioritisation of economic policy and trade relationships with other countries** plays a role, perhaps increasingly so **post-Brexit** when the UK is preoccupied with establishing trade agreements.

## Particulars of determinants by type of trafficking

### Internal v International trafficking

The government's framing of human trafficking as primarily an issue of transnational organised crime provides a justification to implement **tough immigration and border control measures**. It enables the government to **prioritise immigration control** and simultaneously be seen to be **tackling perpetrators**. A recent development that serves the government's political agenda is the increasing numbers of migrants entering the UK via the English Channel on small boats. Interviewees have observed that the heightened visibility of this mode of entry (compared with people entering the UK concealed in lorries) has fuelled the government's purposeful **conflation of human trafficking and smuggling** in order to impose tougher measures to control borders.<sup>96</sup> This has been exacerbated by **media coverage** perpetuating the conflation between human trafficking and smuggling in which potential

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<sup>93</sup> The UK's Modern Slavery Strategy (2014) [at 95] "We must also tackle the demand for inexpensive, unprotected and often illegal labour. It is vital that we work to build an environment where this kind of labour is neither desired nor readily available. There is growing awareness among consumers of the harm caused by unethical business practices" but the strategy lacked any specifics of action to be taken.

<sup>94</sup> Section 53A of the Sexual Offence Act 2003 (criminalises the purchase of sexual services from a prostitute subjected to force, threats, coercion or deception) Section 64A of the Sexual Offences (Northern Ireland) Order 2008 (criminalises the purchase of sexual services), s.1 of the Prostitution (Public Places) (Scotland) Act 2007 (criminalises soliciting or loitering in a public place to purchase sexual services).

<sup>95</sup> See, Government response to New Clause 14 proposed amendment to the Modern Slavery Bill that would introduce measures to ban the importation of products into the UK produced through forced labour. HC Deb 4 November 2014, vol 587, col 689. Karen Bradley's response to New Clause 14, "It would simply not be feasible for UK agencies to police the import of goods on the basis of whether they had been produced using slave labour. We need those trading with companies in other jurisdictions to apply due diligence and take decisive action where they believe that slave labour is being used...".

<sup>96</sup> The Telegraph, "Priti Patel sanctions 'pushback' tactics to turn away migrant boats at sea" (9 September 2021).

victims of trafficking are viewed in terms of statistics rather than as vulnerable individuals.<sup>97</sup> These factors strengthen the hostile environment created by the Home Office in recent years and are evident in the Home Office's 'New Plan for Immigration' and Nationality and Borders Bill. The Home Office identifies as its motivation for introducing tougher immigration restrictions **the abuse of the system** by those dishonestly claiming to be victims of trafficking.<sup>98</sup> **This culture of mistrust and disbelief hinders the government's response to identifying and supporting victims.**

The government's traditional view of human trafficking being a transnational issue has been challenged in recent years due to the increasing number of British nationals being referred into the NRM for criminal and sexual exploitation. Interviewees were unable to identify any determinants behind the government's response to this changing landscape.

### 'Incoming' v 'outgoing' v 'transit' (e.g. country of origin, transit and destination)

Determinants behind anti-trafficking efforts specific to whether the trafficking is incoming, outgoing or transit were not identified by interviewees or through the analysis of domestic law and policy.

It is noteworthy to observe that the classification of the UK as either a source, transit or destination country has changed in the last 20 years. According to the US TiP reports, between 2001 and 2002 the UK was described exclusively as a destination country. From 2003 to 2006 the UK was identified as a destination country who also played a minor role as a transit country to other Western European countries. From 2007 onwards the UK was/is identified as a destination and transit country with increasing evidence of some victims, including UK-resident children, being trafficked internally for sexual exploitation. Therefore, although 'County Lines' cases involving internal trafficking of British citizens are considered to be a recent phenomenon, the TiP reports reveal that this activity was detectable from 2007 suggesting that there was a considerable delay in the government formally recognising internal trafficking.

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<sup>97</sup> BBC News, "Channel crossings: Hundreds more migrants reach UK after record day" (5 August 2021), Daily Mail "Around 200 migrants reach UK today after record 1,000 yesterday - following Priti Patel's threat to withhold £54m from France unless officials stop smugglers" (7 September 2021), The Telegraph "Arriving channel migrants double as smuggling gangs use bigger boats to target smaller ports" (25 May 2021)

<sup>98</sup> Home Secretary's 'New Plan for Immigration; Policy Statement' (March 2021) [at page 31] "However, over recent years we have seen an alarming increase in the number of illegal migrants, including Foreign National Offenders (FNOs) and those who pose a national security risk to our country, seeking modern slavery referrals – enabling them to avoid immigration detention and frustrate removal from our country... Protection from removal, compounded by the fact the threshold for an RG decision is low, means release from immigration detention is very likely, resulting in rising abuse of the NRM".

## Particulars of determinants by stage of response

### Acknowledgment and prioritisation of trafficking as a policy issue

Civil society organisations and survivor networks played an important role in the beginning by campaigning and lobbying over a significant number of years to raise awareness of human trafficking. The **existence of international and regional legal frameworks** empowered civil society actors to advocate more forcefully for improvements in domestic efforts and to hold the government to account. However, **civil society efforts founded on obligations arising from international and regional legal frameworks** alone did not result in trafficking being prioritised as a political issue. The main determinant behind anti-trafficking prioritisation was **individual political will** from Theresa May as then-Home Secretary and later as Prime Minister. Theresa May was responsible for introducing the UK's Modern Slavery Strategy in 2014 and the Modern Slavery Bill in 2013. The role of **individual political will** cannot be viewed in isolation. It was significantly strengthened by **cross-party support** to tackle the scourge of transnational organised crime and the incentive of elevating the **international reputation of the UK** as a world-leader in anti-trafficking efforts.

The **role of religion** in introducing a **morality and abolitionist character** to the framing of anti-trafficking in the UK may have been a determinant that influenced certain political actors such as Theresa May to focus her political will on this issue.

In accordance with the findings of the literature review that **political will** is most effective as a determinant when it is **sustained** over a period of time. A number of interviewees have noted a **political de-prioritisation of human trafficking efforts in recent years**. This is traced to the change in Prime Minister from Theresa May to Boris Johnson. The individual political will of Theresa May only resulted in the prioritisation of trafficking as a policy issue for so long as she remained in a position of power within government. Once her time in office ended, the **political will and prioritisation was not sustained**. Similarly, a number of interviewees observed that the current government is **less driven by the international reputation of the UK**. It has introduced the Nationality and Borders Bill unfazed by the breadth of criticism received to its New Plan for Immigration Consultation. This has not deterred it from pursuing its **political prioritisation of immigration policy** even if this comes at the cost of hindering and undermining anti-trafficking efforts and undermining its international reputation.

### Adoption of legislation and policy and setting up of institutions or mechanisms

**International and regional legal frameworks** played a pivotal role in compelling the government to adopt legislation. The **Palermo Protocol** created the criminal justice

framework response that led to the initial enactment of domestic criminal legislation.<sup>99</sup> The case of **CN v U.K. before the European Court of Human Rights** was a direct determinant behind the introduction of specific legislation to criminalise domestic servitude.<sup>100</sup> **Chapter IV of ECAT and Articles 2 to 10 of the EU Directive** placed criminal justice obligations on the UK which formed the backdrop to the **individual political will**<sup>101</sup> of Theresa May introducing the Modern Slavery Bill to “*simplify legislation, toughen sentences for slave drivers, and enable the courts to restrict activity where individuals may be at risk*”.<sup>102</sup> Mirroring the Palermo Protocol’s political consensus of framing trafficking as a transnational criminal justice issue, the Modern Slavery Bill received **cross-party support** through its politically uncontroversial aims of tackling organised crime and punishing perpetrators. **Political will and cross-party support** were influential factors in ensuring the **allocation of resources and funding** to support efforts. Furthermore, the prospect of elevating the **international reputation of the UK** as a world-leader tackling human trafficking was a contributing and strengthening factor behind the **cross-party support** for the Modern Slavery Bill.

**Regional legal frameworks**, in particular **ECAT and the EU Directive**, have been instrumental in setting standards that obliged the UK to implement in domestic law and policy to improve its efforts in protecting victims. The NRM was introduced in 2009 to implement the requirements of ECAT. **The role of lawyers and the courts in enforcing the victim protection obligations in ECAT and Article 4 of the ECHR** has compelled the government to ensure its policy is compliant and has prevented the government from regressing in its efforts.

## Allocation of resources and capacity building

It is apparent that the **allocation of resources and capacity building** comes from top-down commitment to anti-trafficking efforts. In this respect, the **individual political will** of Theresa May whilst Home Secretary and Prime Minister maintained political priority for anti-trafficking which ensured the allocation resources and funding. It is not clear whether the

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<sup>99</sup> Section 59A Sexual Offences Act 2003 criminalised trafficking for the purposes of sexual exploitation (applicable to England, Wales and Northern Ireland, in Scotland the equivalent provision was s.22 Criminal Justice (Scotland) Act 2003), s.4 Asylum and Immigration (Treatment of claimants, etc.) Act 2004 criminalised trafficking for exploitation including forced labour, slavery and organ harvesting (applied to England, Wales, Scotland and Northern Ireland), and s. 71 Coroners and Justice Act 2009 criminalised slavery, servitude and forced and compulsory labour (applicable to England, Wales and Northern Ireland and in Scotland the equivalent provision was s.47 Criminal Justice and Licencing (Scotland) Act 2010).

<sup>100</sup> The Draft Modern Slavery Bill ECHR Memorandum (December 2013) confirms [at paragraph 6] that s.71 Coroners and Justice Act 2009 was enacted to address the criticisms in CN v U.K.

<sup>101</sup> The determinants of international and regional legal frameworks and individual political will (from Jenny Marra MSP and Lord Morrow MLA) are equally applicable to the introduction of the Human Trafficking and Exploitation (Scotland) Act 2015 and Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Northern Ireland) Act 2015.

<sup>102</sup> Theresa May, Written Ministerial Statement to Parliament; Modern Slavery (16 December 2013).

same level of resource and funding allocation has been maintained after Theresa May was replaced by Boris Johnson.

A number of interviewees have identified that the sustained allocation of resources and funding is contingent upon **efforts producing tangible results**. As some anti-trafficking efforts such as prosecution are more capable of producing identifiable outcomes (compared to prevention where outcomes are inherently difficult to identify and quantify), it is believed that results and outcomes are essential to securing on-going funding. The difficulties in being able to quantify outcomes may have been a factor relevant to the recently announced cuts to the foreign aid budget which includes cuts to funding of trafficking prevention programmes overseas.

## Implementation and enforcement of law, policy and practice

The enactment of laws and policies alone are insufficient to improve anti-trafficking efforts. The role of **sustained political will** along with the **allocation of resources and funding** is integral to the effective implementation and enforcement of these measures. The **domestic courts** retain ultimate oversight of the implementation and enforcement of law and policy and have played an important role in holding the government to account. However, it is important to note that the court's influence is limited to exercising its jurisdiction in relation the cases brought before it. In this respect the **active role of civil society organisations and survivor networks together with lawyers** has been integral to identifying individual cases of illegality and wider systemic failings in order to pursue litigation to enable to court to exercise its powers.

**Insufficient allocation of resources and funding** was identified by interviewees as a factor capable of undermining or hindering the effective implementation of law and policy.

## Establishment of partnerships (including with civil society organisations and the private sector)

The **sustained individual political will** of Theresa May as Home Secretary and Prime Minister and her efforts in prioritising human trafficking contributed to an enhanced multi-agency response across stakeholders and government departments, for example the creation of the Inter-Departmental Ministerial Group on Human Trafficking, the Prime Minister's Task Force, the Modern Slavery Strategy Board<sup>103</sup> and the Modern Slavery Strategy and

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<sup>103</sup> Chaired by the Minister for Preventing Abuse, Exploitation and Crime and composed of representatives of the Home Office (the Director General of the Crime, Policing and Fire Group and Modern Slavery Senior Responsible Owner, the Director of Safeguarding, the Head of the Modern Slavery Unit and the Director of Serious and Organised Crime), the National Policing Lead on Modern Slavery, the GLA Chief Executive, the Director of Organised Crime of the NCA, the Crown Prosecution Service and the Independent Anti-Slavery Commissioner.

Implementation Group ('MSSIG'). MSSIG was convened by the Home Office in 2016 to promote collaboration and achieve consensus in anti-trafficking policy and efforts but divergent and sometimes conflicting priorities has hampered the effectiveness of this group.<sup>104</sup> There are positive examples of multi-agency partnership in both Wales and Scotland. One interviewee attributed this regional success to the lower number of stakeholders involved in anti-trafficking efforts making collaboration and coordination easier to achieve.

In relation to building global partnerships, **political will** combined with the **international reputation of the UK** inspired the UK to rally international commitment, including a 2017 Call to Action to End Forced Labour, Modern Slavery and Human Trafficking at the UN General Assembly. However, the consequences of **Brexit** may be a central factor in undermining criminal justice partnership and coordination efforts in the context of joint investigations.

## Monitoring and evaluation of anti-trafficking efforts and reporting

The **role of international and regional legal frameworks** has been crucial in establishing external and independent monitoring mechanisms. The European Court of Human Rights enforces compliance with the ECHR and has found the UK to be in breach of its Article 4 obligations.<sup>105</sup> GRETA is responsible for evaluating compliance with ECAT and has recently embarked upon its third round of evaluation of the UK and Northern Ireland. **Civil society organisations** provide valuable critique of government efforts that inform these external bodies' assessment of the UK. Although the UK engages with these bodies, including the US Department of State that produces annual TiP reports, interviewees did not consider the UK, and in particular the current government, to be heavily influenced by external criticism of its shortcomings. Criticisms contained within these monitoring reports rarely trigger an immediate remedial response.

On a domestic level, the government created the role of IASC to meet its obligations pursuant to **regional legal frameworks**, namely Article 19 of the EU Directive and Article 29(4) of ECAT. **Pressure from parliamentarians and civil society** during the Modern Slavery Bill debates influenced the government to expand the role and increase the independence of the IASC, albeit there remain concerns that the role isn't as independent as it ought to be

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<sup>104</sup> Letter from a number of NGO members of MSSIG to the Home Office (4 November 2019) highlighting concerns related to the lack of consultation with specialist victim support organisations in the development of the RNA Guidance  
<https://static1.squarespace.com/static/599abfb4e6f2e19ff048494f/t/5dd69f50a8c5393bf2ab8ad3/1574346577049/Letter+MSU+RNA+4.11.19.pdf>

<sup>105</sup> CN v U.K [2012] ECHR 1911 and VCL and AN v U.K (2021) (application no.77587/12).

to satisfy the requirements of a National Rapporteur. Many interviewees noted the high level of engagement of the current IASC and the important role she plays.

To some extent, the government **recognises the importance of data collection** in order to respond to patterns in trafficking and evaluate its efforts. The government responded to the reluctance of some victims being referred into the NRM by introducing a 'duty to notify' provision within the MSA 2015 which requires public bodies to make anonymised referrals in order to capture essential data. However, the NRM doesn't collect data on perpetrators.

## Sustainability

The sustainability of anti-trafficking efforts is driven by **sustained political will** in placing and retaining this issue on the political agenda, which in turn allows for the **allocation of resources and funding**. **Civil society organisations** continue to exert pressure on the government through lobbying and campaigning, along with **academia** providing valuable evidence-based research and **lawyers and the courts** ensuring the enforcement of laws and policies. However, one interviewee from an NGO commented that with the current government and the absence of individual political will, it's more about fighting not to lose ground rather than striving for new improvements.

# Focus: The 2015 Modern Slavery Act

Theresa May, as then-Home Secretary, initiated the introduction of the MSA 2015.<sup>106</sup> Its development was informed by expert evidence,<sup>107</sup> pre-legislative scrutiny by a Joint Select Committee<sup>108</sup> and vigorous parliamentary debates.<sup>109</sup> It progressed from being a criminal justice and law enforcement Bill into a Bill of wider remit with important provisions around supply chains, non-prosecution of victims and support for child victims including Guardians and presumption of minority (albeit hard fought for provisions for overseas domestic workers and additional victim support measures were not included). On balance and despite certain criticisms, the majority of interviewees identified the positive impact of the MSA 2015 in raising the profile of this issue which in turn has resulted in increased funding and resources.

## Determinants

Undoubtedly the existence and ratification of **international and regional legal frameworks**, in particular ECAT and EU Directive 2011/36/EU, acted as umbrella determinants that created momentum to improve anti-trafficking efforts in the UK. However, save for the introduction of the NRM in 2009 which was implemented in direct response to the requirements of ECAT, the mere ratification of regional legal frameworks cannot be considered as a determinant in isolation. These legal frameworks acted as a trigger which, **combined with other determinants such as civil society organisations and survivor networks, political will and funding and resource allocation**, affected change. ECAT entered into force in 2009 and the EU Directive entered into force in 2011. In 2009 the Anti-Trafficking Monitoring Group (ATMG) was established as a coalition of NGOs 'to monitor the UK's implementation of European anti-trafficking legislation'.<sup>110</sup> Ratification of ECAT, and to a lesser extent the EU Directive, therefore galvanised civil society in being able to advocate more forcefully for improvements by holding the government to account. Although this effort did not immediately or singularly result in the *introduction* of legislation or policy, the role and influence of **civil society organisations and survivor networks** as a determinant became more prominent in *shaping the content* of the legislation once introduced into parliament. During the pre-legislative scrutiny and Joint Select Committee stage of the Modern Slavery

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<sup>106</sup> Theresa May, Written Statement to Parliament Modern Slavery accompanied by a White Paper and the draft Modern Slavery Bill, 16 December 2013 (<https://www.gov.uk/government/speeches/modern-slavery>).

<sup>107</sup> Rt. Hon. Frank Field, Baroness Butler-Sloss, Sir John Randall MP, "Establishing Britain as the world leader in the fight against modern slavery, Report from the Modern Slavery Bill Evidence Review", 16 December 2013.

<sup>108</sup> Parliamentary Joint Select Committee of Both Houses, Report on the Draft Modern Slavery Bill (3 April 2014).

<sup>109</sup> Hansard, Modern Slavery Bill 2014 – 2015  
<https://hansard.parliament.uk/search/Debates?startDate=1800-01-01&endDate=2015-03-26&searchTerm=modern%20slavery%20bill&partial=False>

<sup>110</sup> <https://www.antislavery.org/what-we-do/uk/anti-trafficking-monitoring-group/>

Bill the expert evidence and lobbying from specialist stakeholders from civil society informed the debates and resulted in the introduction of new provisions. Interviewees noted that civil society became particularly influential when it unified its efforts alongside other stakeholders who would not normally be campaigning together for the same outcome. For example, the report from the conservative think tank, The Centre for Social Justice,<sup>111</sup> consolidated existing evidence and lobbying from the NGO sector but received a warmer reception from the conservative government. Similarly, civil society and the business sector lobbying together for measures to tackle labour exploitation and slavery in supply chains was especially effective and resulted in s.54 MSA 2015.

Amongst interviewees, the single most identifiable determinant behind the MSA 2015 was **the individual political will of Theresa May**. She is credited with using her power and influence within cabinet as Home Secretary to bring the issue of human trafficking to the fore.

Similarly, in the devolved administrations **individual political will** of key political actors were singularly identified as being determinants behind the development of dedicated legislation. In Scotland it was Jenny Marra MSP who tabled a Member's Bill proposing the Human Trafficking (Scotland) Bill. In Northern Ireland, Lord Morrow MLA proposed the Human Trafficking Bill by way of a Private Member's Bill. Anecdotally, he has also been credited with playing a crucial role in brokering agreement to ensure that the Northern Ireland Assembly refrained from collapsing for long enough to ensure passage of the Bill into law.

A determinant of equal importance was the **cross-party support** that the MSA 2015 received. Interviewees were clear that absent **cross-party support**, it was unlikely that **individual political will** alone would have achieved the same results. Interviewees consistently credited Fiona Hill (née Cunningham), Special Adviser to Theresa May, with identifying a political issue that was capable of garnering such universal support as it was uncontroversial in its aims of tackling organised crime, controlling borders and migration and supporting victims in order to improve the prospects of successful prosecutions. This **cross-party support** ultimately ensured successful progression of the Modern Slavery Bill through the House of Commons and the House of Lords into law.

The language used to promote the Modern Slavery Bill is revealing of the **international reputation of the UK** being a further determinant linked to **political will and cross-party support**. It was described as a "flagship Bill", the "first of its kind in Europe" and was repeatedly referenced as legislation that would set the standard for the rest of the world.<sup>112</sup>

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<sup>111</sup> The Centre for Social Justice, "It Happens Here: Equipping the UK to Fight Modern Slavery" (2013).

<sup>112</sup> Theresa May, Written Ministerial Statement, 16 December 2013. See also, Report of the Modern Slavery Bill Evidence Review "Establishing Britain as the World Leader in the Fight against Modern Slavery" (2013) [at pg 5] "Those who present this report naturally wish for Britain to set the standard for the rest of the world in

This desire for the MSA 2015 and the UK to set international standards and be viewed as implementing pioneering anti-trafficking legislation was an encouragement utilised throughout parliamentary debates to enhance provisions within the Bill.

## Concerns linked to the MSA 2015

Although the MSA 2015 has been identified as a key positive development, it has been subject to widespread criticism. The shortcomings of the MSA 2015 centre principally on the failure to place the protection and support for survivors of modern slavery on a statutory footing. The government initially resisted calls to include provision for Independent Child Trafficking Guardians within the MSA 2015 but were defeated in the vote. The recommendation of the Joint Select Committee to place the NRM on statutory footing was not incorporated into the Bill<sup>113</sup> and there were numerous House of Lords attempts to table amendments designed to enhance the protection of victims, which were unsuccessful.<sup>114</sup>

The refusal of the government to incorporate support and assistance provisions within the primary legislation of England and Wales is inconsistent with the approach of the devolved administrations.<sup>115</sup> It leaves victims in a more precarious situation in accessing support and risks undermining the criminal justice provisions. Prosecutions continue to rely heavily on victim participation and if victims are not properly identified or supported this will invariably impact negatively upon the level and success of prosecutions.<sup>116</sup>

An interviewee from law enforcement expressed broader concern of counter-trafficking efforts focussing heavily on prosecution of perpetrators. He observed that prosecution rates remain low, that prosecution of complex transnational organised crime is highly costly and that increasing the maximum prison sentence from 14 years to life within the MSA 2015 is not a deterrent to perpetrators. He also explained that the prosecution of an individual

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*countering modern slavery. We believe that, if implemented, our recommendations will achieve exactly that, hence our chosen title for the report”.*

<sup>113</sup> Draft Modern Slavery Bill Joint Committee report (April 2014). The Committee recommended placing the NRM on statutory footing to ensure consistency in its operation, decision-making and provision of victim support services and to provide for an appeal process [para 82].

<sup>114</sup> Lord Rosser introduced amendments to implement a ‘best interests of the victim’ duty, to place victim support and assistance on statutory footing so that victims across the UK had the same guaranteed rights and access to support, and to place the NRM on statutory footing. Baroness Young introduced an amendment focussed on civil remedies accessible to victims of trafficking.

<sup>115</sup> The legislation of the devolved administrations placed victim support within primary legislation; s.9 and 10 of the Human Trafficking and Exploitation (Scotland) Act 2015 and Part 3 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

<sup>116</sup> Report of the Modern Slavery Bill Evidence Review “Establishing Britain as the World Leader in the Fight against Modern Slavery” (2013) [pg 4] “Protecting the victim is a hugely important moral imperative in itself but such action reaps rewards for the state. It is rare for a criminal prosecution to be successful if victims do not themselves provide evidence to criminal investigations. A determining factor, however, as to whether victims have the resilience and personal confidence to provide such evidence is the effectiveness and quality of support that is provided to them”.

perpetrator or an organised criminal gang does not reduce the overall threat level as trafficking is wider than one individual or one gang and organised criminality quickly repairs itself.

## Relevance of these examples as representative of broader determinants of anti-trafficking efforts

A determinant particular to the political landscape in the UK relates to the **prioritisation of immigration policy**. Many interviewees shared the view that immigration policy is given precedence over anti-trafficking policy. This is most evident in relation to the support and assistance offered to survivors. According to one interviewee from a victim-support NGO, the Home Office consistently resists calls to enhance survivor support through the provision of services or the grant of extended leave to remain for fear that this could incentivise migration to the UK by creating a “pull factor” which would undermine its political priority of border control and reducing migration.<sup>117</sup> This determinant is also representative of a broader trend observed by interviewees of a de-prioritisation of modern slavery as a political issue. Some interviewees detected a retraction in the government’s response to trafficking in recent years which is attributable to the hierarchy of political priorities of the current government (namely the **prioritisation of immigration policy**) as well as the **absence of individual political will** from individuals in influential cabinet roles within government and the interlinked **de-prioritisation of the allocation of resources** to tackling modern slavery. However, it is noted that when Theresa May was at the fore of developing anti-trafficking efforts, the government similarly resisted attempts to expand victim support in primary legislation thereby indicating that individual political will is subject to party politics and, in the case of a conservative government, subservient to immigration policy priorities.

The most recent and stark example of the current government’s retraction and regression in relation to anti-trafficking efforts is the Nationality and Borders Bill. If passed into law in its current form, this Bill will undermine the gains achieved in the MSA 2015 and place victims at significant risk of being excluded from fundamental protections and support.

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<sup>117</sup> See for example the Private Members Bill tabled by Lord McColl, “Modern Slavery (Victim Support) Bill and the response from Victoria Atkins MP, the Home Office’s Minister for Safeguarding (in reply to a letter from After Exploitation) dated 7 January 2021 in which she states “The Government does not, however, support the Modern Slavery (Victim Support) Bill in its current form. The Government does not agree that victims should automatically be granted leave to remain for 12 months. Immigration decisions for victims of modern slavery are made on a case-by-case basis, considering the individual circumstances of the case” <https://afterexploitation.files.wordpress.com/2021/01/cms-ref-to131-269109-maya-esslemont-1.pdf>

# Focus: The Recovery Needs Assessment Guidance (2019)

In September 2019 the Home Office published the Recovery Needs Assessment Guidance ('RNA Guidance').<sup>118</sup> It is no longer permissible for victim support services to end automatically 45 days after a conclusive grounds decision as the RNA Guidance now requires an individual assessment of a victim's recovery needs to inform and tailor decisions regarding on-going support and care. In principle, this development has the potential to be positive for survivors but there are concerns regarding the framing and implementation of the policy. Overall, it serves as an illustrative case study for determinants, both positive (i.e. that result in government response) and negative (i.e. that hinder or dissuade government action).

Prior to the RNA Guidance, an adult received 45-days of reflection and recovery support but upon being conclusively identified as a victim had 14 days thereafter to exit NRM support. This time-delimited cessation of support services had been severely criticised by **stakeholders** who have relentlessly advocated over a number of years for a needs-based approach to the provision of on-going support following a conclusive grounds decision. The following non-exhaustive examples are illustrative of the breadth of concern expressed by stakeholders; The 2013 pre-legislative scrutiny report of the Modern Slavery Bill recommended *"that a 'survivor support pathway' should be developed in the UK in order to ensure that outcomes for survivors are improved and that their long-term recovery is protected and maintained. This could include a 'mentor' who would ensure that the individual is, for example, gaining access to work and housing – there is a significant need for ongoing support beyond the 45-day reflection period."*<sup>119</sup> The Home Office's 2014 NRM Review recommended *"providing support based on an assessment of the individual needs of the victim. Consideration should be given to entry and exit timescales, support following conclusive identification"*.<sup>120</sup> The 2015 US TiP report noted concern that the UK *"government did not provide sufficient care for victims following the 45-day reflection period...Authorities acknowledged NRM support was not intended to provide rehabilitation, and noted many victims were still profoundly vulnerable after 45 days"*.<sup>121</sup> The Human Trafficking Foundation's report, "Day 46", called for the provision of advice

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<sup>118</sup> Currently v.3 dated 18 January 2021. It applies to England and Wales.

<sup>119</sup> Report of the Modern Slavery Bill Evidence Review "Establishing Britain as the World Leader in the Fight against Modern Slavery" (2013) [at page 15].

<sup>120</sup> Home Office Report written by Jeremy Oppenheim, "Review of the National Referral Mechanism for victims of human trafficking" (November 2014) [at paragraphs 2.2.3, 6.4.4 and 6.4.9].

<sup>121</sup> US Department of State, Trafficking in Persons report, United Kingdom (2015) [at page 351], (2016) [at page 386].

and support beyond the duration of the recovery and reflection period.<sup>122</sup> The Committee of the Parties adopted GRETA's recommendation that the UK "make further efforts to ensure that all victims of trafficking are provided with adequate support and assistance, according to their individual needs, beyond the 45-day period covered by the NRM, with a view to facilitating their reintegration and recovery as well as guaranteeing their protection".<sup>123</sup> The report of the Work and Pensions Committee (2017) recommended "that all confirmed victims of modern slavery be given at least one year's leave to remain with recourse to benefits and services".<sup>124</sup> A 2017 joint-NGO report called for an outcome focused support system which is dependent upon victim need and the grant of a residence permit of at least 12 months.<sup>125</sup> Lord McColl's 'Modern Slavery (Victim Support) Bill' similarly calls for victims to receive assistance, support and leave to remain for 12 months following conclusive identification.

In January 2018 a pilot scheme was launched but focussed on post-NRM local authority services for those survivors who had recourse to public funds rather than assessing the individual need of extended NRM support to prevent a gap in service provision.<sup>126</sup> In February 2019 the government extended the post-conclusive grounds exit period from 14 to 45 days but did not incorporate the calls for a needs-based assessment to allow for on-going support. It can clearly be deduced that in relation to survivor support **civil society organisations and survivor networks along with other stakeholders such as parliamentarians and international and regional monitoring were not influential** in triggering a government response that fully and effectively addressed their concerns. As identified by a number of interviewees, the government's long-standing resistance to extend survivor support can be linked to the **prioritisation of immigration policy** and the government not wanting to create a 'pull factor' that would undermine its efforts to control borders and migration.

The determinants that ultimately drove the government to introduce the RNA Guidance and thereby extend provision for survivor support was a combination of **courts and lawyers enforcing international and regional legal frameworks**. Although lobbying from **civil society organisations and survivor networks** did not directly determine the government response, survivor experiences played an important role in informing the litigation pursued by

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<sup>122</sup> Human Trafficking Foundation, "Day 46 Is there life after the Safe House for Survivors of Modern Slavery?" (2016) [at page 4].

<sup>123</sup> Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings, Recommendation CP (2016)12 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom (November 2016) [at paragraph 2].

<sup>124</sup> Work and Pensions Committee, "Victims of Modern Slavery report" (27 April 2017).

<sup>125</sup> "Supporting Adult Survivors of Slavery to Facilitate Recovery and Reintegration and Prevent Re-exploitation" written by a coalition of anti-trafficking NGOs (March 2017).

<sup>126</sup> Home Office, Evaluation of the modern slavery Local Authority Pathway pilots, Research Report 119 (October 2020).

lawyers. The case of *NN and LP v SSHD*<sup>127</sup> challenged the Home Office's policy of terminating NRM support 45-days post-conclusive grounds decision as being incompatible with Article 12 ECAT and Article 11 of the EU Directive. The grant of interim relief and permission to seek judicial review were indicative of the court's view as to the strength and merits of the legal challenge. Consequently, the Home Secretary conceded the claim and in so doing confirmed that Article 12 ECAT requires survivor support based on individual needs assessment and cannot be delimited by time alone.<sup>128</sup> The Home Secretary committed to introducing a needs-based system of support for victims and shortly thereafter introduced the RNA Guidance. In this respect, the government cannot be described as acting of its own volition in seeking to improve survivor support, rather it was compelled to act through the use of litigation and the role of the court in enforcing international legal frameworks.

## Concerns linked to the RNA Guidance

In conceding the litigation in *NN and LP* the government acknowledged the shortcomings of the previous system. The RNA Guidance ought to have remedied these concerns, however interviewees from civil society have been critical of the government's attempt to circumscribe the scope of the RNA Guidance.<sup>129</sup> Firstly, the RNA Guidance stipulates that the extension of support post-conclusive grounds decision must be linked to the victim's 'recovery needs arising from their modern slavery experience'. It is argued that this threshold focusses too narrowly on needs consequential to exploitation (which in practice is difficult to isolate) and fails to address wider vulnerabilities that initially exposed the victim to exploitation. Failure to address these wider vulnerabilities through appropriate needs-based support amounts to a short-sighted approach to protection and prevention. It leaves survivors at risk of re-trafficking and may result in substantial litigation costs from challenges to RNA decisions; funds that could instead have been channelled into support services. Secondly, the RNA process gives rise to an inherent bias insofar as the assessors are responsible for determining the scope of support that they in turn are responsible for funding. Furthermore, the SCA, that sits within the Home Office, retains final oversight and approval of RNA assessments. The Home Office's role in determining victim support on the one hand, but on the other hand prioritising immigration policy in limiting social welfare support available to migrants to disincentivise migration to the UK is a clear conflict of interest.

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<sup>127</sup> *NN and LP v SSHD* [2019] EWHC 766 (Admin).

<sup>128</sup> *NN & LP v SSHD*, Consent Order and Statement of Reasons (5 July 2019)

<https://www.duncanlewis.co.uk/OnlineLinks/Consent-Order-And-Statement-of-Reasons.pdf>

<sup>129</sup> Letter from some civil society members of Modern Slavery Strategy and Implementation Group's (MSSIG) Victim Support Task and Finish Group to the Home Office (4 November 2019) [at page 3] <https://static1.squarespace.com/static/599abfb4e6f2e19ff048494f/t/5dd69f50a8c5393bf2ab8ad3/1574346577049/Letter+MSU+RNA+4.11.19.pdf>

## Relevance of these examples as representative of broader determinants of anti-trafficking efforts

The volume and breadth of concern expressed by stakeholders that was resisted by the government over a considerable period of time, and the fact that the government's action in implementing the RNA Guidance to meet the longer-term needs of survivors was ultimately compelled by litigation rather than self-initiated, is reflective of its **prioritisation of immigration policy** as a determinant that hinders or dissuades the government from improving its anti-trafficking response to protect victims. The government's desire to be seen to be taking a tough approach to immigration control has consistently and repeatedly been linked to its refusal to grapple fully with the issue of long-term durable solutions for survivors.:

# COVID-19

## Impact on anti-trafficking efforts

The available evidence and views of the interviewees reveal both positive and negative aspects to the government's anti-trafficking response to Covid-19. The most commonly cited concerns amongst interviewees include court closures severely impacting prosecutions, reduced immigration enforcement and border force activities impacting on the detection of victims and significant cuts to foreign aid impacting on prevention work overseas.

The UK's 2020 Annual Modern Slavery Report highlights some operational steps that were taken to mitigate the impact of Covid-19 including training and awareness raising with focus on the food and agricultural sector and placing a moratorium on terminating NRM accommodation between April and August 2020. Notably, the NRM in the UK remained fully operational throughout Covid-19 which placed it amongst only 14% of countries globally who maintained a fully operational NRM and 49% of countries who maintained a partially operational NRM.<sup>130</sup> The concerns regarding the severe delays in decision making within the NRM persist, however this issue is long-standing and pre-dated Covid.<sup>131</sup>

An interviewee from a support organisation provided a poignant example of the Scottish government's positive efforts. In response to concerns of survivors facing barriers in accessing vital support, the Scottish government approved core funding for TARA to provide a smart phone and 12 months of unlimited data to survivors. It is hoped that this provision will continue post Covid-19.

The £10m public funding awarded to the Modern Slavery and Human Rights Policy and Evidence Centre in 2019 has been beneficial in enabling 11 different research projects to analyse the impact of Covid-19 on modern slavery both domestically and internationally.<sup>132</sup> One such study focussed on the risk of exploitation to migrant workers in the UK during Covid-19. It noted that the GLAA staff were not classed as 'key workers' during the first year of the pandemic and consequently in-person inspections were suspended. Inadvertently, a shift to phone inspections had some positive aspects in enabling inspectors to speak more freely and openly with employees away from supervisors. However, it was also noted that there were delays in the GLAA responding to reported suspicions of modern slavery. A lack of government guidance resulted in businesses having to develop knowledge

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<sup>130</sup> OSCE / UN Women, Addressing Emerging Human Trafficking Trends and Consequences of the COVID-19 Pandemic (30 July 2020) [at page 22] <https://www.osce.org/odihr/human-trafficking-COVID-19-report>.

<sup>131</sup> NRM data for Q2 2021 show that the average number of days between a reasonable and conclusive grounds decision is currently 435 median and 535 mean days.

<sup>132</sup> Modern Slavery and Human Rights Policy and Evidence Centre: Impact of Covid-19 research projects <https://modernslaverypec.org/research-areas/covid-19>.

and best practice to be able to respond appropriately.<sup>133</sup> Another study highlighted concerns of forced labour in the production of medical gloves supplied to the NHS during Covid-19 (the demand for which increased fourfold in England and Scotland). Despite contractual requirements to assure labour standards in supply chains, ethical procurement and in-person auditing was rendered difficult.<sup>134</sup>

The US Department of State considered that, overall, the UK sustained its anti-trafficking efforts during the pandemic and therefore retained its Tier 1 ranking.<sup>135</sup>

## Impact on victims

Undoubtedly Covid-19 increased the vulnerability and reduced the visibility of victims trapped in situations of exploitation. As reported in the UK's Annual Modern Slavery Report (2020) "*continued restrictions on international travel will have led to an increased reliance on the existing victim pool in the UK. Individuals with significant and multiple vulnerabilities, including those who have previously been exploited, remain at greatest risk of modern slavery*".<sup>136</sup> This reduced visibility and detection of victims is evident to some extent in the 2020 NRM statistics which mark an end to the previous year-on-year growth of referrals.<sup>137</sup> Immigration Enforcement and UK Visa and Immigration made fewer referrals. There was notable decrease in labour exploitation referrals but an increase in child referrals for exploitation linked to county lines, which according to some interviewees, continued unabated during the pandemic.

A number of interviewees raised concerns relating to sexual exploitation and the anecdotal shift on-line. The UK's national statistics show increased numbers of domestic-abuse-related offences recorded during Covid-19. It is unknown whether this will lead to increased incidents of sexual exploitation.<sup>138</sup> According to an OSCE / UN Women report evaluating the global surge in domestic violence during Covid-19 "*domestic violence is among the recognized, well-documented push factors into trafficking for the purpose of sexual*

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<sup>133</sup> Nottingham Rights Lab Report on "Understanding risks of exploitation for vulnerable migrant workers in the UK during Covid-19" (July 2021) [at page 22, 34 and 37], (Summarised by Modern Slavery and Human Rights Policy and Evidence Centre Report on Impact of Covid-19 on Romanian and Bulgarian agricultural workers in Britain, (July 2021)).

<sup>134</sup> Modern Slavery and Human Rights Policy and Evidence Centre report on "Forced labour in the Malaysian medical gloves supply chain during the Covid-19 pandemic" (July 2021).

<sup>135</sup> US Department of State TiP Report (2021) <https://www.state.gov/reports/2021-trafficking-in-persons-report/united-kingdom/>.

<sup>136</sup> Paragraphs 3.02 – 3.03.

<sup>137</sup> For a more detailed analysis see the Modern Slavery and Human Rights Policy and Evidence Centre Policy Brief "Impact of Covid-19 on identification of potential victims of modern slavery in the UK in 2020" (March 2021).

<sup>138</sup> Office for National Statistics, Domestic abuse in England and Wales overview (November 2020). <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/domesticabuseinenglandandwalesoverview/november2020>

exploitation. Human trafficking and domestic violence can occur on a continuum of violence, and the dynamics involved in human trafficking are frequently interwoven with those of domestic violence".<sup>139</sup>

## Combined impact of Covid-19 and Brexit

When asked whether Covid-19 has contributed to a reprioritisation of anti-trafficking efforts, interviewees were unable to identify or attribute any shift in priorities to the pandemic, but more readily suggested that the current government, its anti-migrant rhetoric and prioritisation of immigration policy is more likely to determine a de-prioritisation of anti-trafficking effort. Interviewees were often unable to isolate the impact of Covid-19 from the on-going impact of Brexit on anti-trafficking efforts. A recent report considering the intersect between Covid-19 and Brexit observed; *"Two points are of critical importance, one around the extent to which businesses will manage to recruit sufficient workforce and interlinked with it, the extent to which labour abuses, exploitation and trafficking are likely to intensify"*.<sup>140</sup> An interviewee from a labour exploitation charity expressed similar apprehension of the Seasonal Worker Pilot,<sup>141</sup> namely the risk of illegal workers being used to meet the shortfall caused by the 30,000 government cap on visas thereby increasing the risk of labour exploitation and abuse. In addition to the delays in prosecutions caused by court closures during the pandemic, a couple of interviewees also highlighted the potential negative impact of Brexit on joint investigations and future prosecutions.

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<sup>139</sup> OSCE / UN Women, Addressing Emerging Human Trafficking Trends and Consequences of the COVID-19 Pandemic (30 July 2020) [at page 28] <https://www.osce.org/odihr/human-trafficking-COVID-19-report>.

<sup>140</sup> Nottingham Rights Lab Report on "Understanding risks of exploitation for vulnerable migrant workers in the UK during Covid-19" (July 2021) [at page 40], (Summarised by Modern Slavery and Human Rights Policy and Evidence Centre Report on Impact of Covid-19 on Romanian and Bulgarian agricultural workers in Britain, (July 2021)).

<sup>141</sup> Department for Environment Food and Rural Affairs and Home Office Seasonal Worker Pilot <https://www.gov.uk/government/publications/seasonal-workers-pilot-request-for-information/seasonal-workers-pilot-request-for-information>

# Conclusion

It is clear that determinants that have motivated, driven and also hindered the government's anti-trafficking response are **complex, interconnected or sometimes contradictory**. It is not possible to attribute specific weight to determinants when viewed in isolation. Rather, it is an **amalgam of different determinants**, that are **context-specific, non-linear and multi-dimensional**, that has informed and shaped the UK's anti-trafficking efforts.

Consistently, the role of **international and regional legal frameworks** has been identified as an overarching determinant relevant to protection, prosecution, prevention and partnership. However, the mere ratification of these frameworks is insufficient to influence government action. The obligations within international and regional legal frameworks must be fully incorporated into domestic law and policy in order for them to become effective and enforceable. In the UK it is the sustained efforts of **civil society organisations and survivor networks** that has raised awareness of human trafficking based on their expertise and front-line experiences of supporting survivors. The ratification of international and regional legal frameworks has served to strengthen the ability of civil society, along with **lawyers and the courts**, to hold the government to account in complying with its obligations. To some extent, these actors have compelled the government to implement certain anti-trafficking measures, particularly in relation to victim support and protection. However the key driver in prioritising human trafficking on the political agenda was the role of **individual political will** from Theresa May as Home Secretary and Prime Minister. Her position of power and influence within government, and her ability to achieve **cross-party support** for the Modern Slavery Bill, was fundamental in raising the political profile of this issue which in turn ensured **allocation of resources and funding**.

Elevation of the **international reputation of the UK** and a desire to be viewed as a world-leader in combating modern slavery was a factor that **underpinned the individual political will and the cross-party support** for improving the UK's anti-trafficking efforts. To a lesser and unknown degree, a number of interviewees identified the **UK's colonial past** and a sense of **religious morality** as being potential determinants for certain political actors who were dedicated to improving the UK's anti-trafficking efforts.

Specific to the UK's political landscape, the **prioritisation of immigration policy** has repeatedly been identified as a factor that has resolutely influenced and shaped all areas of the government's anti-trafficking response. The prioritisation of immigration policy underpinned the **government's political will** in embracing modern slavery as a vehicle through which it could impose **stricter immigration and border control** under the guise of prevention action. **Prioritisation of immigration policy** has also been identified as a determinant behind the government's **reticence to enhance or expand support and assistance for survivors** for fear of creating a 'pull factor' that would undermine its efforts to stem the flow of migration into the UK.

Two recent events have the potential to negatively impact anti-trafficking efforts. Firstly, Covid-19 resulted in increased vulnerability for victims who became more hidden and less able to seek protection. The pandemic had an immediate and short-term impact on the number of referrals being made into the NRM, on the court's ability to progress prosecutions and on inspection and enforcement activity. The economic consequences of Covid-19 also triggered a cut to foreign aid which will impact upon overseas trafficking prevention programmes. The longer-term impact of Covid-19 is unknown. Secondly, there are likely to be a range of consequences following the UK's exit from the European Union. An immediate consequence that has been identified relates to the ability of the UK to engage in joint criminal investigations with European partners which could negatively impact intelligence sharing, prevention and prosecution work.

In summary, it is clear that the UK has taken great strides in recent years to develop its anti-trafficking response. However, the combined impact of the current government's prioritisation of immigration policy, along with the longer-term consequences of Covid-19 and Brexit, have the potential to hinder efforts and trigger a regression in the UK's anti-trafficking response.

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