These briefings provide an analysis of the publicly available UK National Referral Mechanism (NRM) data on potential victims of modern slavery and the disaggregated NRM data which is available from the UK Data Service (UKDS).[1] The NRM is the UK's official system through which victims of modern slavery are identified and supported (See the 'How NRM decision-making operates' box below).

This is the seventh in a series of briefings produced by IOM UK which follow each quarterly release of NRM data from the Home Office. The briefings focus on recent NRM data, but also use historical NRM data for context. They provide an analysis of key highlights, ongoing trends, and data gaps identified by IOM UK. The analysis of the disaggregated NRM data from the UKDS enables the briefings to offer additional detailed analysis to the Home Office's own statistical bulletin for each NRM data release.

This briefing focuses on the first 6 months of 2023 and highlights four key findings from analysis of the data (see box on right).

Only 53% of Reasonable Grounds (RG) decisions made in the first six months of 2023 were positive, compared to 90% in the same period in 2022. There are significant variations by nationality: 86% of RG decisions for UK nationals were positive compared to 40% for foreign nationals.

On the 30th January 2023, the sections on Reasonable Grounds (RG) decision making in the Modern Slavery Act Statutory Guidance (MSASG) were updated to incorporate clauses on modern slavery that were introduced as a result of the 2022 Nationality and Borders Act. The updates to the MSASG explained, "A decision maker must base their decision on objective factors to have real suspicion and therefore meet the RG threshold. An "objective" factor is a piece of information or evidence that is based in fact. Ordinarily, a victim's own account, by itself, would not be sufficient absent objective factors to have real suspicion."
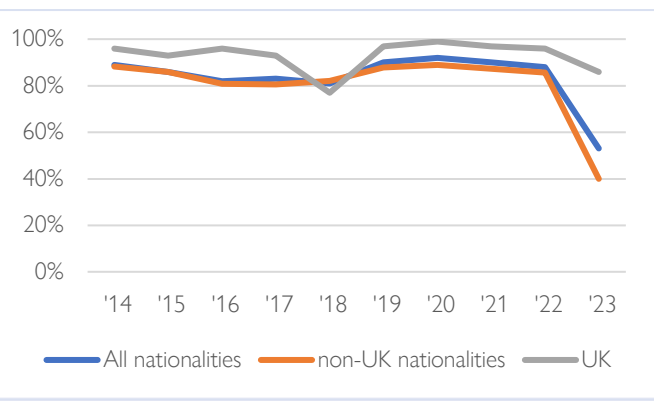
HIGHLIGHTS

Only 53% of Reasonable Grounds (RG) decisions made in the first six months of 2023 were positive, compared to 90% in the same period in 2022. There are significant variations by nationality: 86% of RG decisions for UK nationals were positive compared to 40% for foreign nationals.

The proportion of positive Reasonable Grounds decisions in the first 6 months of 2023 for cases referred by Home Office staff was only 32%, this was less than half the proportion for referrals by the police, local authorities and charities.

The median waiting time for Reasonable Grounds decisions in Q2, 2023 has jumped to 21 days, prior to this it had never exceeded 6 days.

71% of people disqualified from protection under the National Referral Mechanism because they were a 'threat to public order' were referred as a potential victim of criminal exploitation.

Graph 1 illustrates how the introduction of these changes has led to an unprecedented fall in the proportion of positive RG decisions which had never fallen below 81% between 2014 and 2022 but fell suddenly in the first 6 months of 2023 to only 53%. In the first six months of 2022 the proportion of positive RG decisions was 90%.
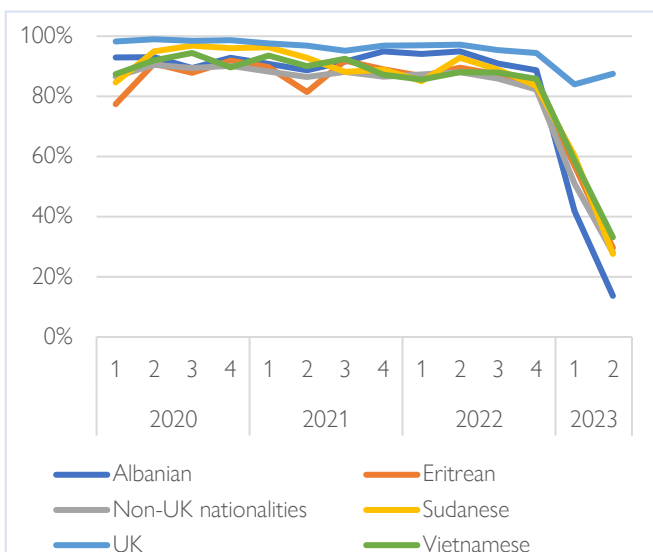

Graph 1: Percentage of Positive RG Decisions per year

HOW NRM DECISION-MAKING OPERATES

The National Referral Mechanism (NRM) has a two-stage decision-making process for identifying potential victims of modern slavery (a term that includes any form of human trafficking, slavery, servitude or forced labour). The first stage is the Reasonable Grounds (RG) decision, which should be made within 5 working days of a potential victim being referred to the NRM. The RG decision is a "decision taken by the competent authorities as to whether the decision maker agrees there are reasonable grounds to believe, based on all available general and specific evidence but falling short of conclusive proof, that a person is a victim of modern slavery."[1] A positive RG entitles a person to a reflection period of at least 30 days to receive specialist support and assistance. The second stage Conclusive Grounds (CG) decision should be made no sooner than 45 days after the RG decision, and is made on the 'balance of probabilities' threshold. Both the RG and CG determinations are made by the Single Competent Authority (SCA) and Immigration Enforcement Competent Authority (IECA) which both sit within the Home Office. Further information on the NRM is available here.

The Home Office's statistical bulletins for the first two quarters of 2023 have provided this explanation for the large fall in the proportion of positive RG decisions, "The proportion of positive decisions had remained relatively stable in recent years, with around 9 out of every 10 referrals receiving a positive decision. However, since 30 January 2023, the threshold for a positive reasonable grounds decision changed, which has led to a reduction in the proportion of positive decisions issued." However, IOM's analysis of the raw NRM data from the UK Data Service (UKDS) finds that the fall in the proportion of positive decisions has been very inconsistent for UK nationals compared to other nationalities, including the most referred nationalities in 2023.

The reported overall percentages of 58% and 48% positive RG decisions in the first two quarters of 2023 obscure even more dramatic falls in the proportion of positive decisions for non-UK nationals and the most referred nationalities. These figures also obscure that the changes described by the Home Office as resulting in a reduction in positive decisions appear to have had little impact on the outcomes of decision making for UK nationals. Graph 1 shows that in the first six months of 2023, 86% of RG decisions for UK nationals were positive compared to 40% for non-UK nationals.

Graph 2 shows the proportion of positive decisions for UK nationals increased in Q2, 2023 compared to Q1, 2023, rising from 84% to 88%. The Home Office's description of the historical trend of 9 out of 10 decisions being positive still fits the situation for UK nationals in the first six months of 2023. In stark contrast, the proportion of positive decisions for Albanians fell from 42% in Q1, 2023 to 14% in Q2, 2023. Whereas the historical trend saw 9 out of 10 decisions being positive, now it is closer to only 1 in 10 for Albanians.

Graph 2: Percentage of positive RG decisions by top 5 nationalities referred in 2023 and non-UK nationals.

The disparities in the proportion of positive decisions for different nationalities in Q2, 2023 are greater than the differences around a decade ago. In 2014, a Home Office review of the NRM acknowledged, "Non-Governmental Organisations have suggested that there is a nationality bias in acceptance into the National Referral Mechanism." However, the review concluded "we believe the figures are fairly similar and do not suggest a nationality bias." That review was commenting on data for referrals in 2013 which showed the proportion of positive RG decisions for UK nationals was 21 percentage points higher compared to Albanians and 25 points higher compared to Vietnamese.

In Q2, 2023 the proportion of positive decisions for UK nationals was 55 points higher than Vietnamese (33%) and 74 points higher than Albanians and was 60 points higher than the proportion for all non-UK nationals (28%). UK nationals were six times more likely to receive a positive RG decision than Albanians in Q2, 2023 and were two or three times more likely to receive a positive decision than the other nationalities which make up the top five countries of origin for referrals.

The Home Office might want to consider producing decision data at both RG and CG stage which is disaggregated by nationality as it occasionally did in previous publications of NRM statistics. IOM will continue to monitor the proportion of positive RG decisions in the second half of 2023 to see if there is any impact from the updates to the MSA statutory guidance on RG decision making which now clarifies "A decision maker is entitled to consider all forms of evidence in reaching their conclusion – this is not restricted to objective evidence to prove or disprove an account." Those changes were introduced in response to a legal challenge against the 30th January guidance.

The proportion of positive Reasonable Grounds decisions in the first 6 months of 2023 for cases referred by Home Office staff was only 32%, this was less than half the proportion for referrals by the police, local authorities and charities.

While there was a large fall in the proportion of all positive RG decisions made in 2023, this was even lower for cases which were referred by First Responder Organisations (FROs) within the Home Office. There are three separate FROs within the Home Office; Immigration Enforcement, UK Border Force and UK Visas and Immigration. Graph 3 shows that historically there has been little difference in the proportion of positive decisions for cases referred by Home Office FROs and other types of FROs. For example, in

2014-2018, they were higher or equal to those referred by Local Authorities. And while the proportion of positive decisions from 2018-2022 for cases referred by Home Office FROs was the lowest of the different types of FROs, the proportion was still very high, with at least 88% of positive decisions.

However, the data shows that just 32% of referrals made by Home Office FROs received a positive RG decision in the first six months of 2023. This was 50 points lower than the proportion for Local Authorities and half the 64% of positive decisions for referrals made by the police.
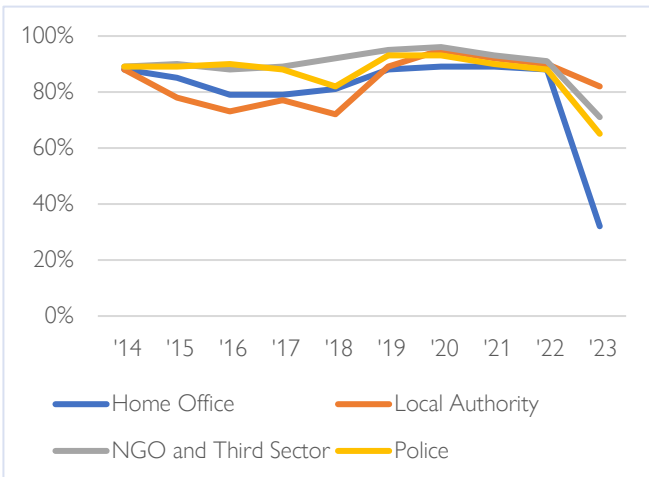
Graph 3: Percentage of positive RG decisions per year by the type of First Responder Organisation that made the referral

Graph 4 highlights the proportion of referrals by Immigration Enforcement which received a positive RG decision. Immigration Enforcement made the second largest number of referrals in the first 6 months of 2023 (UK Visas and Immigration made most referrals). The graph shows that in Q2, 2023 only 4% of RG decisions were positive for cases that were referred by Immigration Enforcement whereas a year earlier this was 94%.
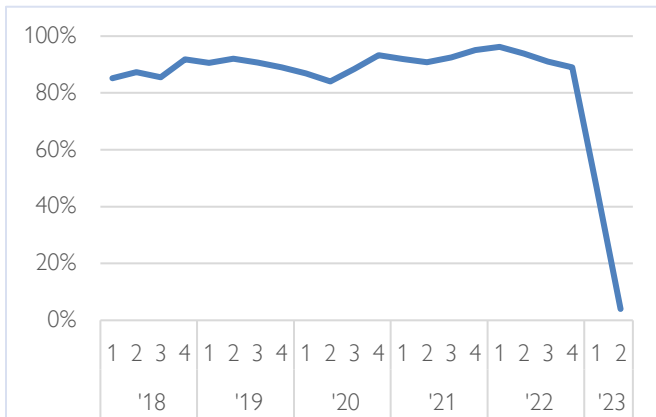
Graph 4: Percentage of positive RG decisions per quarter for cases referred by Immigration Enforcement.

The New Plan for Immigration which was published in October 2021 argued that "the threshold for an RG

decision is low" and that reform was needed for "distinguishing more effectively between genuine and vexatious accounts of modern slavery." If the situation of 9 out of 10 people receiving a positive RG decision led the UK government to conclude that the threshold was too low then a situation where nearly all referrals by staff in a Home Office department could equally be seen as indicating that the 30th January guidance made the threshold too high.

IOM will continue to closely monitor the outcomes of decision making for referrals by different FROs in the second half of 2023 to see if people referred by the Home Office and in particular Immigration Enforcement continue to receive a disproportionate number of negative decisions.

The median waiting time for Reasonable Grounds decisions in Q2, 2023 has jumped to 21 days, prior to this it had never exceeded 6 days.

Until Quarter 2, 2023 the Home Office had never included any data on how long it had taken to make RG decisions in its quarterly publications of NRM statistics. The Q2, 2023 publication provides the mean and median number of days to make RG decisions in every quarter since Q1, 2014.

Graph 5 shows that prior to Q2, 2023 the median waiting time for RG decisions had never exceeded six days. However, in the second quarter of 2023 the median waiting time was 21 days.

The Home Office's statistical bulletin for Q2, 2023 acknowledges that this significant increase was a consequence of the change to the MSA statutory guidance on 30th January. It explains that competent authorities "needed to take additional actions to request additional information demonstrating objective factors in order to make a decision throughout this quarter."
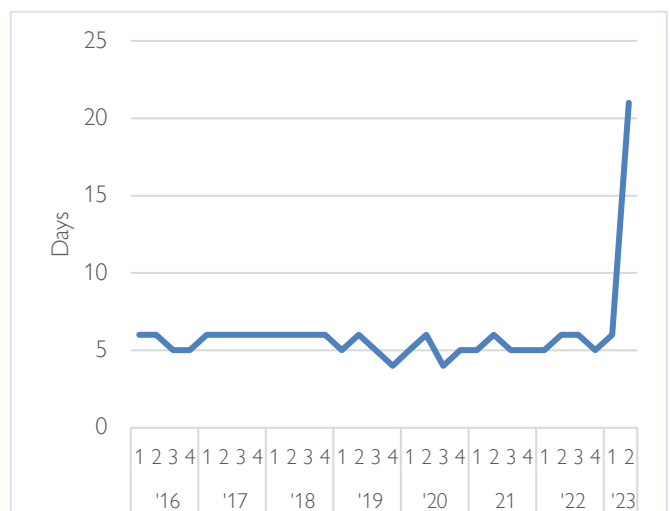
Graph 5: Median waiting times (in days) for RG decision per quarter.

The 21-day median compares against the MSASG expectation that decisions "should be made, where possible, within 5 working days of referral to the NRM." Analysis of the UKDS NRM data finds that 18% of people referred to the NRM in the first 6 months of 2023 were still waiting for an RG decision on the 13th July 2023.[2]

There were more than 100 people referred in the first 3 months of 2023 who were still waiting for a RG decision on the 13th July. They would have waited more than 100 days, 20 times longer than the 5 day target. For those referred in Q2, 2023, 37% were still waiting for a decision.

It is imperative decisions are made quickly because access to government funded specialist support for potential victims of modern slavery is dependent upon a positive RG decision. However, within the MSASG there is a recognition that emergency accommodation and initial support may be required for some individuals in advance of an RG decision to ensure their safety and protect them from being homeless. In the past with median waiting times of 4-6 days such emergency support would only be needed for a very short time and stakeholders could be confident that a decision was imminent. However, with a median waiting time of 21 days people will have to rely on emergency support for significantly longer and the accessibility of such support may be undermined.

The mean waiting time for RG decisions made in Q2, 2023 was 38 days which is longer than the minimum 30 day recovery period for potential victims of modern slavery to access specialist support to start to recover from their experiences since. The minimum guaranteed recovery period was reduced by Section 61 of the Nationality and Borders Act. It was previously set at 45 days. While the guaranteed period of support for victims has decreased the waiting time for people to access that support has increased.

IOM's previous NRM briefings have acknowledged significant improvements in the last 12 months with the increasing number of CG decisions being made while highlighting the extremely long time that people have waited for those decisions. However, the second quarter of 2023 saw a small fall in the number of CG decisions. In Q2, 2023 there were 2086 decisions compared to 2259 in Q1, 2023. This was the first time that the number of such decisions has fallen against the previous quarter since Q4 2020 – Q1 2021.

A fall in the number of CG decisions seems unsurprising given the unprecedented increase in waiting times for RG decisions. Individual decision makers will be responsible for both RG and CG decisions and if it takes them longer to make RG decisions then they will have less time to do the work required to make CG decisions.

If the long waiting times for RG decisions continue throughout the second half of 2023, expansion of the support available to people referred to the NRM while they are waiting for a RG decision will be needed.

IOM will continue to monitor both the numbers of RG and CG decisions being made each quarter and the waiting times for these decisions.

71% of people disqualified from protection under the National Referral Mechanism because they were a 'threat to public order' were referred as a potential victim of criminal exploitation.

Since 30th January 2023 Clause 63 of the 2022 Nationality and Borders Act enables the disqualification of people from receiving NRM support if they are considered as a 'threat to public order' (as defined in that legislation).

The Home Office's NRM statistics show that between 30th January and 30th June 2023 there were 465 requests to disqualify a case on public order grounds. Of these, just over half were confirmed as disqualified (256). Those statistics do not provide any details about the types of cases that were disqualified but much more detailed information is available from the UKDS NRM data.

Given the large number of people referred to the NRM as potential victims of criminal exploitation, it is important that people do not face disqualification for offences they were forced to commit. The Home Office has been aware of such concerns. In February 2022 it published a policy paper on the Nationality and Borders Bill titled 'abuse of modern slavery protections factsheet' which specifically addressed the question, "What are you doing to ensure those whose criminality is a result of their exploitation are not disqualified from protection?" In response the Home Office explained, "We are aware of the pressures victims can face to commit crimes during the period of exploitation and we are therefore developing underpinning guidance that balances both risk and vulnerabilities, giving consideration to both age and crimes committed as part of exploitation."

However, analysis of the UKDS data finds that in 71% of disqualified cases, the reported type of exploitation included 'criminal exploitation.'[3] Graph 6 shows the number of cases which have been disqualified by the type(s) of exploitation reported. The most common exploitation type was 'Criminal' followed by 'Criminal and Labour' and 'Labour'. NRM referrals reporting 'criminal exploitation' would include people trafficked for the purpose of cultivating cannabis in so-called cannabis factories and in "county lines".
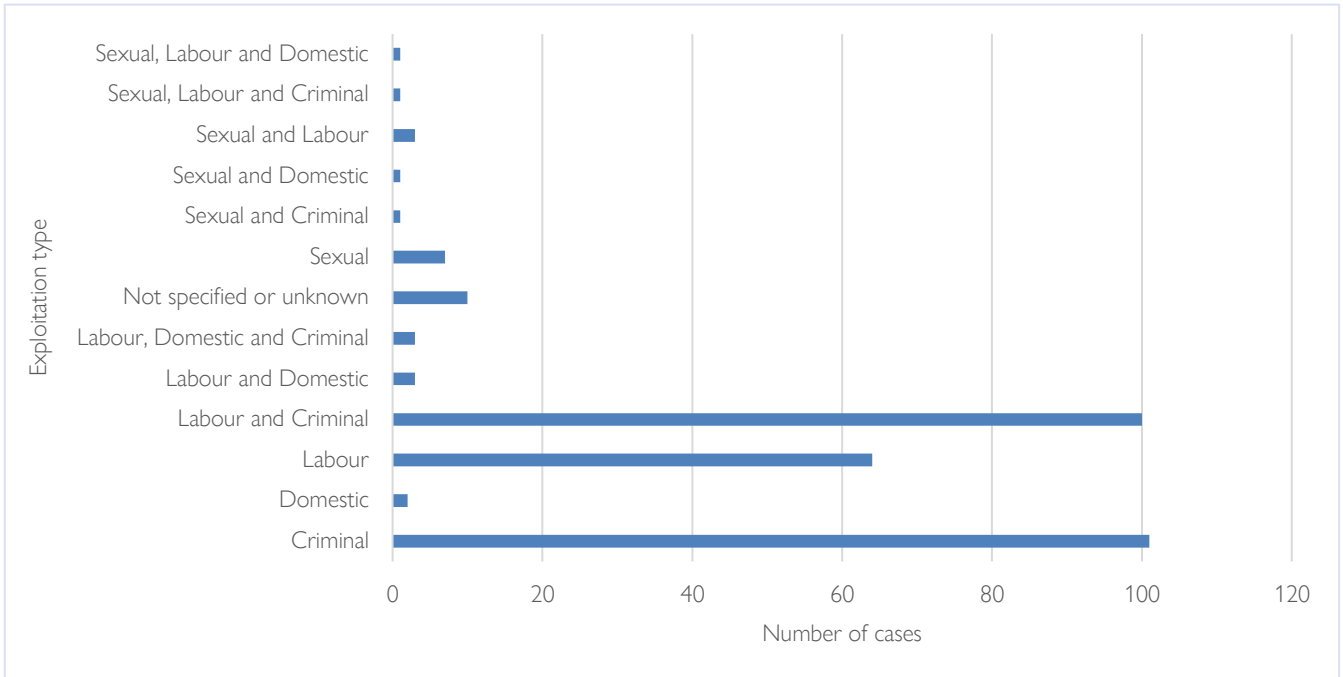
Graph 6: Number of cases which have received a public order disorder disqualification by the recorded exploitation type of the case.

The MSASG includes a list of indicators with a rating of 'High' and 'Low' threat to public order. One of the 'low' indicators is "Where it is accepted that the offence was committed as part of the individual's exploitation as outlined in Section 45 of the Modern Slavery Act 2015." However, it is highlighted, "that this indicator alone is not sufficient to categorise as low." It is therefore possible that people referred to the NRM because they were a potential victim of criminal exploitation may be disqualified from the protection of the NRM because of the crimes they were coerced into committing.

There has been widespread concern about the impact of Clause 63 of the Nationality and Borders Act and at the end of July 2023 the High Court ruled that aspects of the public order disqualification are unlawful. A hearing into the legality of the disqualification of the policy is expected to take place in October 2023. IOM will continue to monitor those cases which receive a public order disqualification.

1. This description of the Reasonable Grounds test is taken from version 3.4 of the Modern Slavery Act Statutory Guidance which was the guidance in use at the time this NRM briefing was published. As discussed in the briefing the test for making a Reasonable Grounds decision was changed multiple times through revisions to the Modern Slavery Act Statutory Guidance during the first half of 2023

2. The 13th July 2023 is when the data was extracted from a live management information system. The UKDS data notes explain that the data is "based on the situation as of 13 July 2023, when an extract was taken from the system. Due to the live nature of this system not all fields may be complete and data entry errors may be present in small numbers of cases."
https://doc.ukdataservice.ac.uk/doc/8910/mrdoc/pdf/8910_ukds_data_notes.pdf

3. The UKDS data does not provide information on which quarters the cases were disqualified so this data will likely include some cases that were disqualified in Q3, 2023, not just the first 6 months of 2023.

ABOUT IOM

Founded 72 years ago in 1951, IOM is the leading inter-governmental organization in the field of migration. With 175 member states and presence in over 100 countries, IOM as the UN Migration Agency is committed to the principle that humane and orderly migration benefits migrants and society. The organization works with its partners in the international community to assist in meeting the operational challenges of migration, advance understanding of migration issues, encourage social and economic development through migration and to uphold the well-being and human rights of all migrants. The IOM Country Office in the UK (IOM UK) is one of over 150 country offices, promoting cooperation and dialogue on migration issues. (See www.unitedkingdom.iom.int for more information).

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