

## **IOM Response to the ICIBI Call for Evidence: An inspection of the Immigration Enforcement Competent Authority**

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### **Introduction**

The International Organization for Migration, Country Office for the United Kingdom of Great Britain and Northern Ireland (IOM UK) is pleased to submit a written response to the Independent Chief Inspector of Borders and Immigration (ICIBI) inspection of the Immigration Enforcement Competent Authority (IECA).

Founded 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.

According to Article 1 (c) of the IOM Constitution, one of the purposes and functions of the Organization is “to provide [...] advisory services on migration questions and other assistance as is in accord with the aims of the Organization”. IOM seeks to assist States in the development and delivery of programmes, studies and technical expertise on combating migrant smuggling and trafficking in persons, in particular women and children, in a manner consistent with international law.

Since the mid-1990s, IOM and its partners have provided protection and assistance to more than 100,000 men, women and children, who were trafficked for sexual and labour exploitation, slavery or practices similar to slavery, servitude, or organ removal.

### **Evidence submission:**

IOM’s submission responds to all three areas of interest outlined in the call for evidence: the impact of legislative changes, the timeliness of decisions (reasonable and conclusive grounds) and the quality of decisions and assurance mechanisms.

This submission is based on IOM’s analysis of the disaggregated National Referral Mechanism (NRM) data which is available from the UK Data Service.<sup>1</sup> The analysis identifies significant differences in the outcomes of decisions by the IECA since the implementation of changes introduced by the Nationality and Borders Act 2022 (NABA) and increases in how long decisions by the IECA have taken.

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<sup>1</sup> <https://beta.ukdataservice.ac.uk/datacatalogue/studies/study?id=8910>

As noted in the call for evidence, the IECA is responsible for processing referrals of potential victims of modern slavery and human trafficking via the NRM for a specific population of people, namely: foreign national offenders (FNOs) in prison or an immigration removal centre (IRC); non-detained FNOs in the community where action has begun towards deportation; those detained in an IRC or prison for immigration purposes and individuals whose asylum claims have been deemed inadmissible. What this means in practical terms is that the IECA only processes referrals for potential victims who are foreign nationals.

The IECA was established in November 2021, resulting in the creation of two decision-making bodies within the Home Office, with the Single Competent Authority (SCA) processing referrals for all other potential victims (i.e. for UK nationals and for foreign nationals who are not in prison or immigration detention or deemed to have inadmissible asylum claims). Prior to this, the SCA processed all referrals, having been established in 2019 with the stated purpose to “separate” NRM decisions “from the immigration system”.<sup>2</sup> The creation of the IECA to make decisions for the specific sub-set of potential victims outlined above, inextricably links decision making with the immigration system. The NRM data shows that since the policy changes introduced by NABA have come into effect, there are concerning patterns emerging in decision-making by the IECA, as outlined below.

## **1. Impact of legislative changes**

### **1.1 Large fall in positive Reasonable Grounds decisions by the IECA**

On 30 January 2023, guidance for how Reasonable Grounds (RG) NRM decisions should be made was amended to incorporate the requirements of Clause 60 of NABA.<sup>3</sup> The changes meant decision makers needed to “believe, based on objective factors but falling short of conclusive proof, that a person is a victim of modern slavery.” The official guidance explained that “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.”<sup>4</sup>

A judicial review about the requirement for objective evidence for a positive decision led to the Home Office withdrawing the requirement at the end of June 2023.<sup>5</sup> In July 2023, the Home Office published updated guidance for making RG decisions which remains in place today. The decision is now made based on “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.”<sup>6</sup>

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<sup>2</sup> <https://www.gov.uk/government/news/modern-slavery-victims-to-receive-longer-period-of-support>

<sup>3</sup> <https://www.legislation.gov.uk/ukpga/2022/36/section/60>

<sup>4</sup>

<https://webarchive.nationalarchives.gov.uk/ukgwa/20230130154837/https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims>

<sup>5</sup> <https://www.matrixlaw.co.uk/news/sshd-withdraws-new-evidential-test-for-reasonable-grounds-decisions-in-modern-slavery-statutory-guidance/>

<sup>6</sup> <https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims/modern-slavery-statutory-guidance-for-england-and-wales-under-s49-of-the-modern-slavery-act-2015-and-non-statutory-guidance-for-scotland-and-northe>

The Home Office has acknowledged that the changes to decision making resulted in a large fall in the proportion of positive decisions, which has stood at around 90% in recent years.<sup>7</sup> In the first 9 months of 2023, only 54% of those decisions were positive. However, IOM’s analysis of the NRM data identifies larger falls in the proportion of positive decisions made by the IECA compared to the SCA, as elaborated below.

### 1.2 Large fall in positive decisions by the IECA for foreign national adult cases

Analysis by IOM has shown that in the first 9 months of 2023, a much higher percentage of UK nationals received a positive RG decision compared to foreign nationals.<sup>8</sup>

**Figure 1** shows that between 2021-2022 a foreign national adult was more likely to receive a positive RG decision from the IECA compared to the SCA. This has changed significantly since the changes to decision making were introduced in January 2023, with only 6% of positive RG decisions by the IECA in Q2, 2023 and 33% in Q3, 2023, compared to 36% and 48% by the SCA.

There needs to be further monitoring of the data to see if this pattern continues and if it does, there should be a closer examination to understand why the percentage of positive decisions by the IECA is much lower.

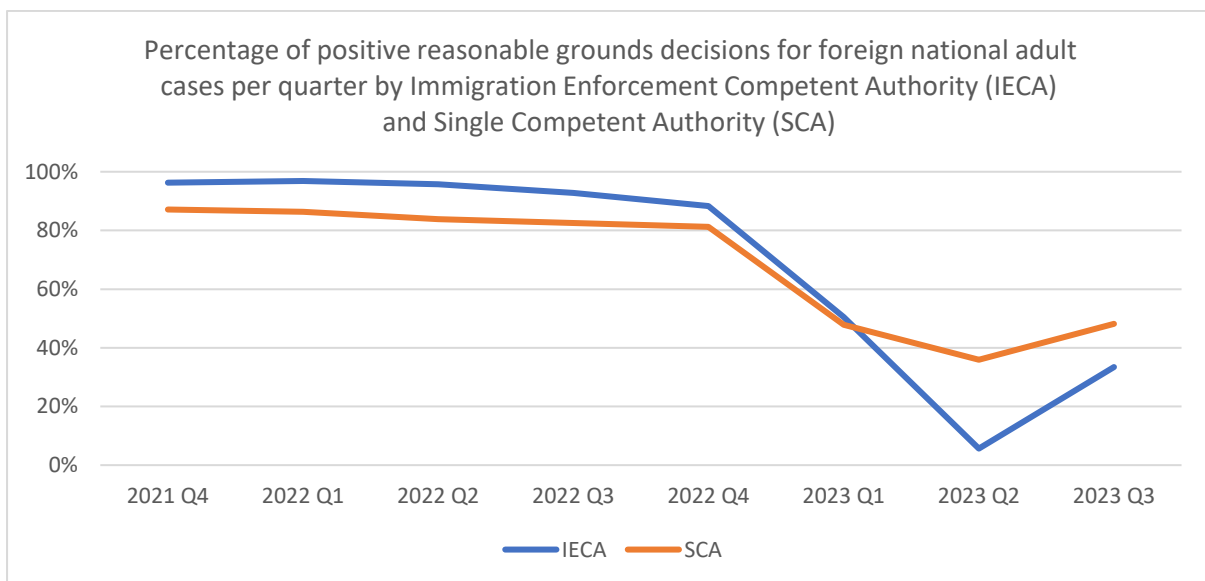


Figure 1<sup>9</sup>

<sup>7</sup> [https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-july-to-september-2023/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-3-2023-july-to-september#:~:text=From%20July%20to%20September%202023%2C%20the%20NRM%20received%204%2C138%20referrals,to%20September%202022%20\(4%2C579\).](https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-july-to-september-2023/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-3-2023-july-to-september#:~:text=From%20July%20to%20September%202023%2C%20the%20NRM%20received%204%2C138%20referrals,to%20September%202022%20(4%2C579).)

<sup>8</sup> <https://unitedkingdom.iom.int/news/updated-analysis-national-referral-mechanism-data>

<sup>9</sup> IOM analysis conducted using data from: Home Office, Modern Slavery Research & Analysis. (2023). National Referral Mechanism and Duty to Notify Statistics, 2014-2023. [data collection]. 10th Edition. UK Data Service. SN: 8910, DOI: <http://doi.org/10.5255/UKDA-SN-8910-10>

### 1.3 Large falls in positive decisions by the IECA for foreign national child cases

The statutory guidance for the 2015 Modern Slavery Act states that the IECA is “responsible for a specific cohort of adult cases” and that the “SCA is the competent authority for all other cases referred to the NRM, which includes all child cases.”<sup>10</sup> However, **Figure 2** shows that between November 2021 and September 2023, the IECA made 707 RG decisions and 138 CG decisions for child cases.

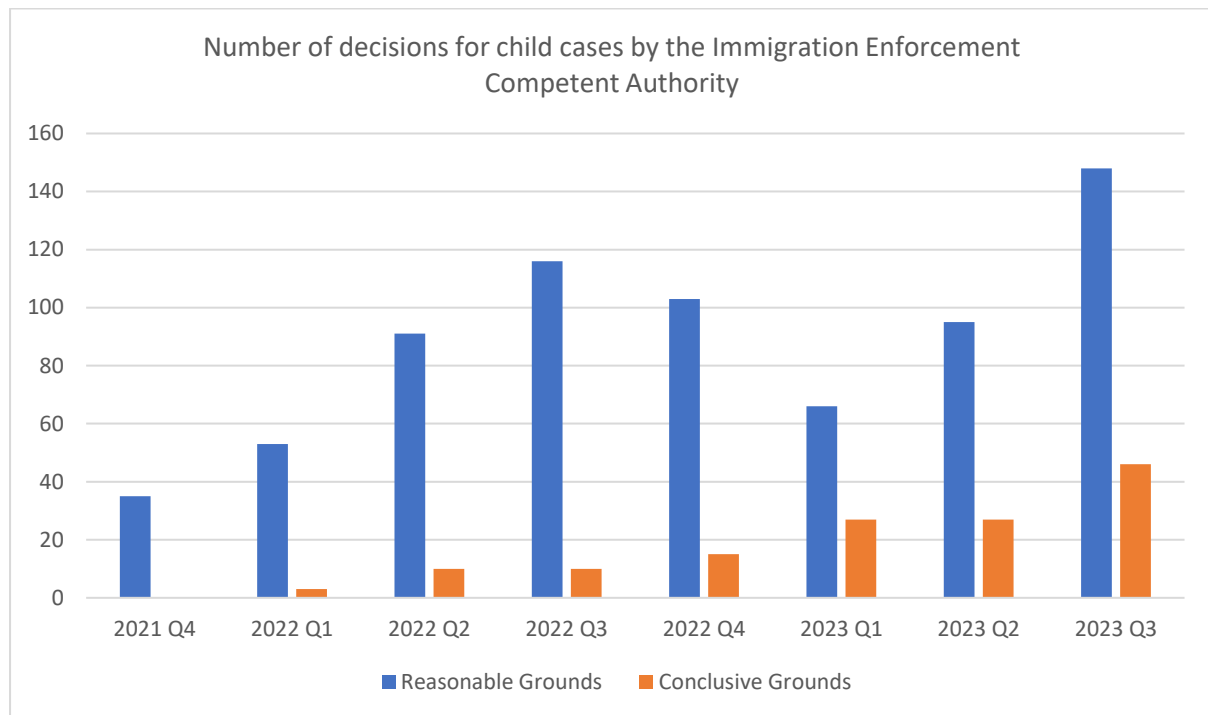


Figure 2<sup>11</sup>

The most likely hypothesis for why the data shows hundreds of child cases where the IECA was the decision maker is that they are cases where a person reported they experienced modern slavery as a child, but they were an adult when they were referred to the NRM. However, this would mean that the description of the IECA’s caseload in the Modern Slavery Act statutory guidance (or the interpretation of it) is defining adult cases in a way which is inconsistent with the NRM data which categorises the age of cases based on the person’s age at the time of exploitation not their age at referral. There are also no other examples in modern slavery policy and guidance where an adult/child case denotes the age at the point of referral.

<sup>10</sup> <https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims/modern-slavery-statutory-guidance-for-england-and-wales-under-s49-of-the-modern-slavery-act-2015-and-non-statutory-guidance-for-scotland-and-northe>

<sup>11</sup> IOM analysis conducted using data from: Home Office, Modern Slavery Research & Analysis. (2023). *National Referral Mechanism and Duty to Notify Statistics, 2014-2023*. [data collection]. 10th Edition. UK Data Service. SN: 8910, DOI: <http://doi.org/10.5255/UKDA-SN-8910-10>

Prior to the changes in RG decision making, foreign national child cases were more likely to receive a positive decision from the IECA than the SCA. **Figure 3** illustrates IOM’s analysis of the decision data which finds that between April and June 2023 (after the changes were introduced) only 12% of IECA’s decisions for those cases were positive compared to 56% for the SCA. The removal of the requirement to provide objective evidence at the end of June was followed by an increase in positive decisions by the IECA to 47% but this was still lower than the 57% of positive decisions by the SCA.

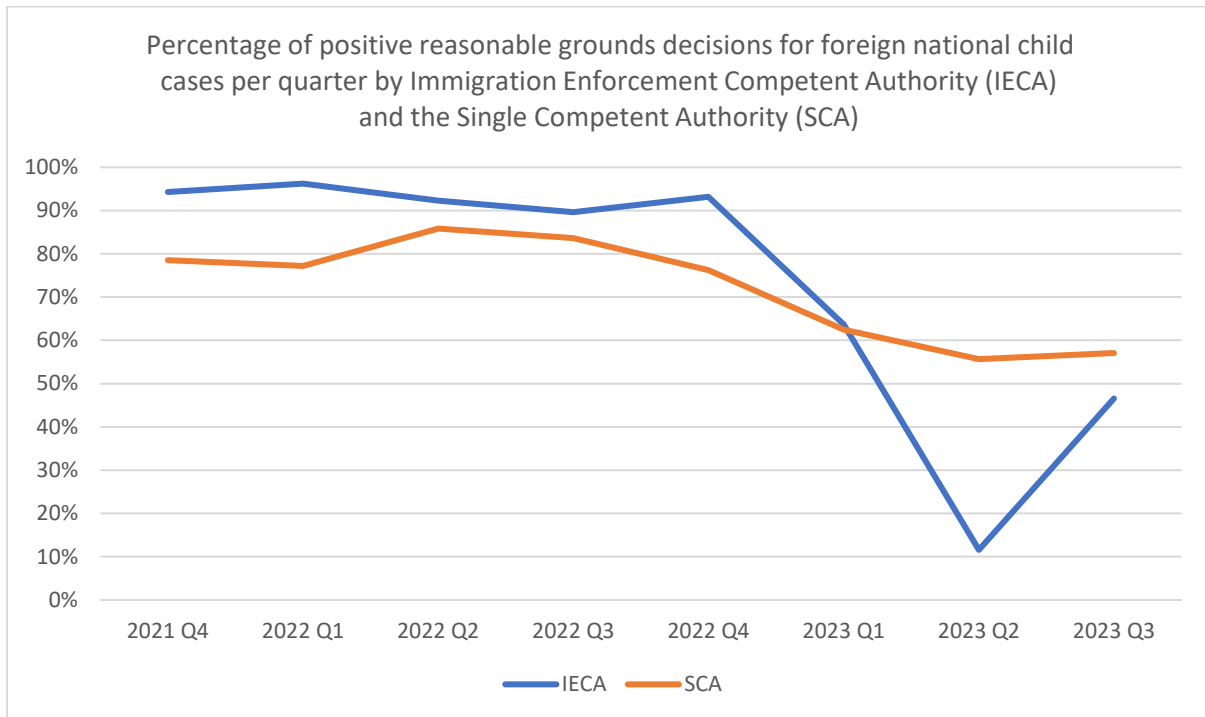


Figure 3<sup>12</sup>

IOM would welcome clarification about the IECA’s involvement in making decisions about child cases. If the IECA is currently, and will in the future, make decisions for people who are referred to the NRM as adults but have reported being exploited as a child then amendments to the Modern Slavery Act statutory guidance on decision making responsibility for child cases would help better reflect such practice.

The SCA has been making decisions on child cases since April 2019 and has made twenty times more decisions for child cases than the IECA. It is unlikely that decision makers within the IECA will have the same experience and expertise about child trafficking (which has a different definition to the trafficking of adults in domestic and international law) as their counterparts in the SCA. Given all of this, it can be argued that only the SCA should be making decisions on child trafficking cases, as implied by the Modern Slavery Act statutory guidance.

<sup>12</sup> IOM analysis conducted using data from: Home Office, Modern Slavery Research & Analysis. (2023). *National Referral Mechanism and Duty to Notify Statistics, 2014-2023*. [data collection]. 10th Edition. UK Data Service. SN: 8910, DOI: <http://doi.org/10.5255/UKDA-SN-8910-10>

## 2. Timeliness of decisions

### 2.1 Longer waiting times for Reasonable Grounds decisions by the IECA since NABA

There has been a significant increase in the waiting times for RG decisions since the changes to legislation took effect. **Figure 4** shows that between 2021-2022 the median waiting time for decisions by the IECA had fluctuated between a low of 4 days and a high of 11 days but this rose to 16 days for decisions between April-June 2023 and 24 days for decisions between July-September 2023. This means that, based on the most recent quarter for which data is available, IECA RG decisions were taking 19 days longer than the 5-day target outlined in the Modern Slavery Act statutory guidance.

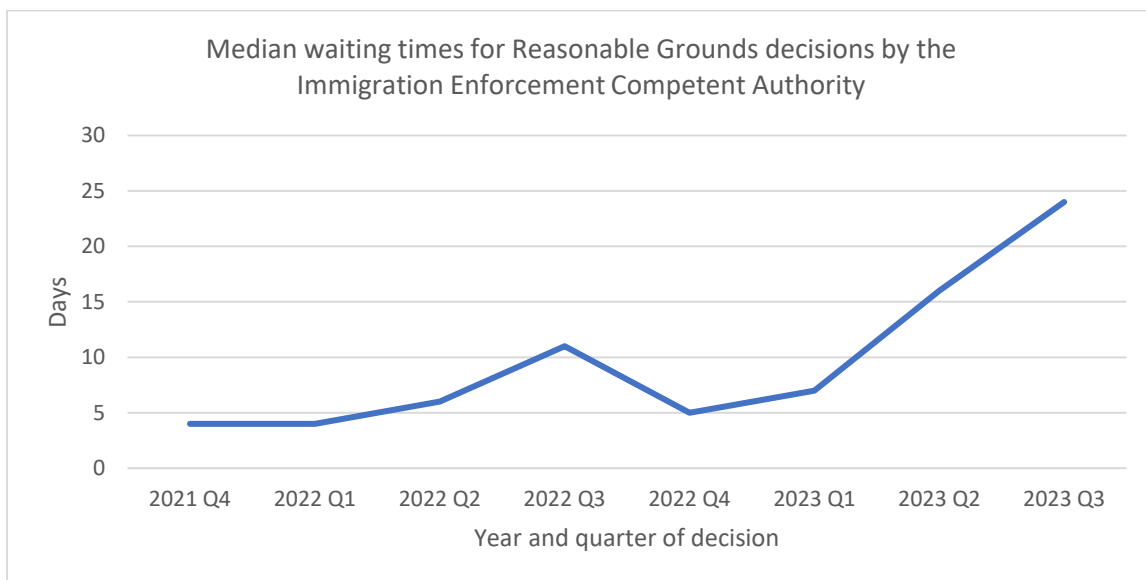


Figure 4<sup>13</sup>

### 2.2 Increasingly longer waiting times for Conclusive Grounds Decisions by the IECA

**Figure 5** shows that the waiting times for Conclusive Grounds (CG) decisions by IECA have steadily increased each quarter since it was established. Despite the IECA having no cases of people who were referred before November 2021 the median waiting time for CG decisions by the IECA was almost as long as the waiting times for decisions by the SCA in Quarters 2 and 3 of 2023.

<sup>13</sup> IOM analysis conducted using data from [https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-july-to-september-2023/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-3-2023-july-to-september#:~:text=From%20July%20to%20September%202023%2C%20the%20NRM%20received%204%2C138%20referrals,to%20September%202022%20\(4%2C579\).](https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-july-to-september-2023/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-3-2023-july-to-september#:~:text=From%20July%20to%20September%202023%2C%20the%20NRM%20received%204%2C138%20referrals,to%20September%202022%20(4%2C579).)

There has been a significant expansion in the numbers of decision makers working for the IECA. In December 2021, there were 26.26 FTE (full-time equivalent) decision makers<sup>14</sup> and 111.87 in June 2023.<sup>15</sup> Comparing that number of staff in June 2023 with the number of CG decisions made in Quarter 2 (211 decisions) and Quarter 3 (427 decisions) 2023 there would have been 1.89 decisions per FTE decision maker and 3.82 decisions per FTE decision maker respectively. In comparison, the rate of decisions for the 207.93 FTE decision makers in the SCA<sup>16</sup> was higher, at 8.94 in Quarter 2 and 9.44 in Quarter 3.

While this analysis shows that IECA decision makers were making far fewer decisions than their equivalents in the SCA, it cannot explain whether the low number of decisions by the IECA is due to the operation of the IECA. There could be external factors related to the types of people that the IECA is responsible for, particularly those in prison or an IRC which could slow and complicate the decision-making processes for IECA staff.

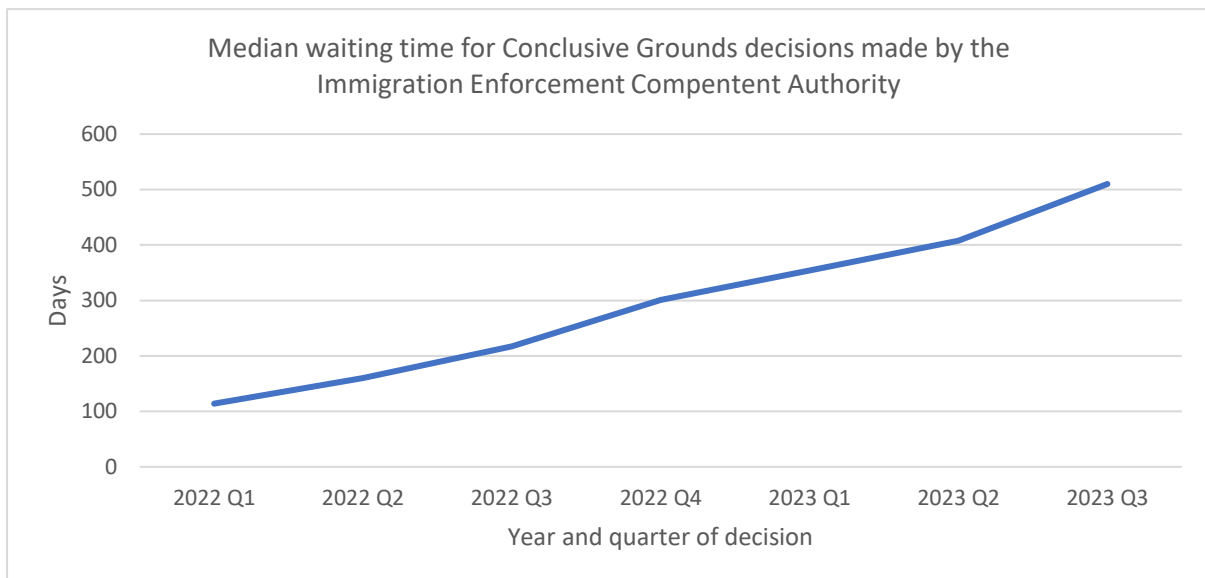


Figure 5<sup>17</sup>

### **3. Quality of decisions and assurance mechanisms**

#### **3.1 An absence of independent assurance mechanisms since the cancellation of the Multi-Agency Assurance Panels**

IOM is not aware of any current independent or external quality assurance mechanisms for NRM decisions made by the IECA.

<sup>14</sup> <https://www.theyworkforyou.com/wrans/?id=2021-12-02.HL4644.h&s=%22single+competent+authority%22+FTE#gHL4644.r0>

<sup>15</sup> <https://www.theyworkforyou.com/wrans/?id=2023-05-18.HL7949.h&s=single+competent+authority#gHL7949.r0>

<sup>16</sup> Ibid.

<sup>17</sup> IOM analysis conducted using data from: Home Office, Modern Slavery Research & Analysis. (2023). National Referral Mechanism and Duty to Notify Statistics, 2014-2023. [data collection]. 10th Edition. UK Data Service. SN: 8910, DOI: <http://doi.org/10.5255/UKDA-SN-8910-10>

Between May 2019 and December 2022, the Multi-Agency Assurance Panels (MAAPs) operated as a very limited assurance mechanism, although they were then cancelled by the Home Office without prior consultation with key stakeholders in the sector, including panel members. The Home Office's explanation was that removing MAAPs from the process would provide some reduction in waiting times.<sup>18</sup> However, the increased median waiting time for CG decisions by the IECA in 2023 suggests that the removal of that assurance process from the workflow has not resulted in reducing the waiting times.

The MAAPs involved representatives from local authorities, NGOs and police reviewing negative CG decisions which had been made by both competent authorities.<sup>19</sup> Each panel would review a selection of recent negative CG decisions prior to the decision being communicated to the individual concerned. The panels were to reach a majority decision on whether panel members agreed with the negative decision made by the competent authority.

MAAPs had limited functions and power; they were only in place for CG decisions and a decision maker was only required to revisit the decision they made and could proceed with a negative decision. No data was ever published on the number of negative decisions which the MAAPs disagreed with or how many decisions were reversed following a request for the decision maker to review the original decision. The UK government's 2020 annual modern slavery report noted that the Home Office were working with Ipsos Mori on an evaluation of the MAAPs "with the aim of publishing in early 2021."<sup>20</sup> However, that evaluation was not published. Although the evaluation pre-dated the creation of the IECA, the findings of that evaluation would have offered insight into the MAAPs usefulness as an assurance mechanism. A re-establishment of MAAPs with greater powers and transparency about their practical impacts could help improve the quality of decisions and provide an assurance mechanism in a way that could improve the fairness and integrity of the NRM system, particularly when there are concerns around different patterns of decision making between the two competent authorities.

### **3.2 Large proportion of reconsideration requests overturn IECA decisions**

The NRM data on reconsideration requests for decisions by the IECA is currently the most useful source of data for understanding the quality of decision making by the IECA. The Modern Slavery Act statutory guidance explains that a reconsideration request can be submitted if "an individual believes the negative decision made by the competent authority is incorrect."<sup>21</sup> Between November 2021 and September 2023, 132 of the 266 reconsideration requests for negative RG decisions made by the IECA led to a positive decision being issued.<sup>22</sup> This means that half of the reconsideration requests resulted in a negative decision being overturned.

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<sup>18</sup> <https://www.theyworkforyou.com/wrans/?id=2023-02-20.148612.h>

<sup>19</sup> Two staff members from IOM UK were MAAP panel members while they were in existence.

<sup>20</sup> [https://assets.publishing.service.gov.uk/media/5f8877198fa8f5041ddc52c2/FINAL-2020\\_Modern\\_Slavery\\_Report\\_14-10-20.pdf](https://assets.publishing.service.gov.uk/media/5f8877198fa8f5041ddc52c2/FINAL-2020_Modern_Slavery_Report_14-10-20.pdf)

<sup>21</sup> <https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims/modern-slavery-statutory-guidance-for-england-and-wales-under-s49-of-the-modern-slavery-act-2015-and-non-statutory-guidance-for-scotland-and-northe>

<sup>22</sup> <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-july-to-september-2023/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics->



It is important to note that the data on reconsideration requests is likely to under-represent the true scale of cases which received a negative decision but should have received a positive decision. This is due to significant challenges to make reconsideration requests, a report by the Anti-Trafficking Monitoring Group emphasised that it is “not enough to rely on reconsideration requests as a check for poor decision-making as having been denied support following a negative decision, many potential victims will not be in a position to request a reconsideration.”<sup>23</sup>

**February 2024**

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[uk-quarter-3-2023-july-to-september#:~:text=From%20July%20to%20September%202023%2C%20the%20NRM%20received%204%2C138%20referrals,to%20September%202022%20\(4%2C579\).](#)

<sup>23</sup> [https://www.antislavery.org/wp-content/uploads/2021/02/MAAPs\\_report\\_final.pdf](https://www.antislavery.org/wp-content/uploads/2021/02/MAAPs_report_final.pdf)