

GOOD INTENTIONS

A review of the New Asylum Model and its impact on trafficked women claiming asylum

POPPY Project
Refugee Women's Resource Project at Asylum Aid

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We would like to acknowledge the bravery of women trafficked into prostitution who shared their often very traumatic experiences with us, both for themselves and to help other women exploited in the sex industry.

Good Intentions: A review of the New Asylum Model and its impact on trafficked women claiming asylum

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CONTENTS

| | | |
|-----|---|----|
| 1. | Introduction | 4 |
| 2. | Summary and key findings | 5 |
| 3. | Overview of the New Asylum Model | 6 |
| 3.1 | Background to the New Asylum Model | 6 |
| 3.2 | The rationale behind the New Asylum Model | 6 |
| 3.3 | Key features of the New Asylum Model process | 7 |
| 3.4 | Evaluation of the New Asylum Model | 8 |
| 4. | Research findings: procedural analysis of the New Asylum Model | 10 |
| 4.1 | End-to-end management by single Case Owner | 10 |
| 4.2 | Speed of decision-making | 12 |
| 4.3 | Detained fast track and non-immigration detention | 14 |
| 5. | Research findings: substantive analysis of New Asylum Model decision-making | 16 |
| 5.1 | Convention grounds: membership of a Particular Social Group | 16 |
| 5.2 | Engaging with the facts of the case | 18 |
| 5.3 | Credibility | 19 |
| 6. | Conclusions | 21 |
| 7. | Recommendations | 22 |
| 7.1 | Procedural aspects of the New Asylum Model | 22 |
| 7.2 | Decision-making under the New Asylum Model | 22 |
| 8. | Tables: data collection statistics (table of POPPY cases) | 23 |
| | Appendices | |
| | Appendix A Methodology | 25 |
| | Appendix B Bibliography | 28 |
| | Appendix C POPPY service user interview outline | 30 |
| | Appendix D POPPY support worker focus group discussion points | 31 |
| | Appendix E Training objectives for Case Owner teams | 32 |
| | Appendix F About Asylum Aid and Eaves Housing | 33 |

1. INTRODUCTION

In 2007 the Home Office comprehensively reformed the asylum determination process by introducing the New Asylum Model (NAM). The new system promised improvements in the speed and quality of decision-making on asylum applications, in order to deliver a 'better deal for those with well-founded claims'¹, as well as to ensure more efficient handling of the claims of women found not to be in need of international protection, up to the point of their removal from the UK.

The changes introduced by the NAM are significant for many trafficked women because, in the absence of specific measures, such as residence permits, the protection afforded by the Refugee Convention and the Human Rights Act is currently the only means by which trafficked women from outside the EU can ensure that they will not be returned to their country of origin. A grant of asylum prevents the risk of repeat trafficking and provides the opportunity for security, recovery and rehabilitation in the UK. This in turn enables women, where appropriate, to become witnesses in criminal proceedings and to provide evidence against their traffickers.

In 2006 the POPPY Project and the Refugee Women's Resource Project (RWRP) at Asylum Aid investigated the outcomes of all of the asylum claims made by women who were trafficked into the UK and supported by the POPPY Project between March 2003 and August 2005². The report raised concerns about the quality of initial stage Home Office decision-making as the research found that, of the 32 women who claimed asylum, only one was granted asylum prior to appeal. However, the remaining women had a success rate at the appeal stage (i.e. were granted refugee status or Humanitarian Protection) six times higher than the national overall acceptance rate of asylum appeals. The report also highlighted concerns relating to the application of gender issues in asylum claims. The following month RWRP published *Lip Service or Implementation? The Home Office Gender Guidance and Women's Asylum Claims in the UK*, research based on an analysis of Asylum Aid's case files, which questioned whether decision-makers were acting in accordance with the Home Office gender guidance policy.

In recent years, the UK Government has implemented a series of positive measures to ensure greater protection and assistance for victims of trafficking. The latest addition to existing legislation aimed at criminalising trafficking in the UK is the Immigration, Asylum and Nationality Act 2006³. The UK Human Trafficking Centre (UKHTC) was set up in 2006 as a 'multi-agency centre that provides a central point for the development of expertise and operational co-ordination in relation to the trafficking of human beings'⁴. In March 2007 the UK Government signed the Council of Europe Convention on Action against Trafficking in Human Beings (and has expressed its intention to ratify the Convention by the end of 2008) and in the same month the Home Office and the Scottish Executive jointly published the *UK Action Plan on Tackling Human Trafficking*.

In a climate where the UK Government is taking significant steps to tackle human trafficking, this research analyses the new processes established by the NAM and evaluates whether the procedural changes have affected immigration decision-making and outcomes for trafficked women supported by the POPPY Project.

A range of quantitative and qualitative methodological approaches were used in the course of the research, including: Data analysis of POPPY service user's case files; analysis of reasoning and decisions made in Reasons For Refusal letters and appeal determinations; structured interviews with POPPY service users; and focus groups with POPPY Project support and outreach workers. A full overview of the research methodology is set out in Appendix A.

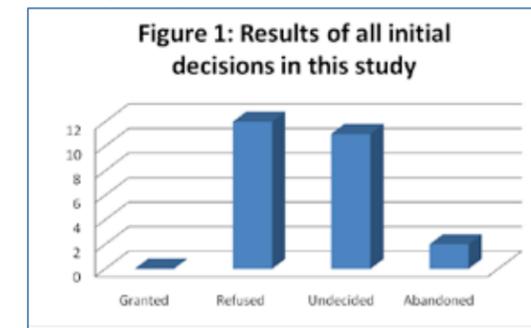
2. SUMMARY AND KEY FINDINGS

This report analyses the cases of 25 women who received support from the POPPY Project and who made a claim for asylum under the NAM between 1 January 2007 and 1 January 2008⁵.

Of the 25 cases in the sample, eight were initially processed in the detained fast track at Yarl's Wood with decisions being reached in as few as ten days⁶. Women were detained on average for a period of 36 days before being released. Six cases remained in the detained fast track until after an initial decision had been made. The other cases were all dealt with by Case Owners based in central London.

Nine claims are still awaiting an initial decision at the time of writing, and two further cases are being challenged on Dublin Convention grounds⁷. An additional two claims were abandoned by the claimant before an initial decision was reached.

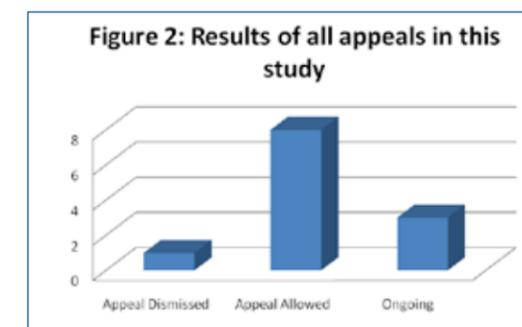
At the time of writing, 12 claims had received an initial decision. They were all refused at the initial stage (see Figure 1).



Of the 12 cases refused at the initial stage, eight decisions were overturned at appeal because the Immigration Judge decided that the Home Office was wrong to refuse the asylum and/or human rights claim.

Of the eight successful appeals, seven were granted five years Leave to Remain as a Refugee under the terms of the Refugee Convention. In a further case Humanitarian Protection was granted. The Home Office has appealed two out of these eight cases and the reconsideration hearings are currently pending.

In the remaining four cases refused at the initial stage, one was dismissed on appeal but is awaiting a reconsideration hearing⁸ and three cases are still ongoing (see Figure 2).



5. A total of 34 women who received support from the POPPY Project had in fact claimed asylum under the NAM during this time but nine cases were not included in this research due to the support offered being extremely brief (in most instances by the POPPY Outreach Service) and therefore the vast majority of information needed to contribute to this research was unavailable.

6. From the information available, the average length of time taken between a woman's screening interview and receiving a decision on her claim was 18 days. This is based on the six fast-track cases analysed in this report.

7. Under the Dublin arrangements (the Dublin Convention and Regulation (EC) No. 343/2003 "Dublin II" that replaced the Convention).

8. The Court has ordered a reconsideration hearing in this case on the grounds that the Immigration Judge who dismissed the appeal made an error of law.

1. Liam Byrne, Minister for Immigration, Written Ministerial Statement, HC Hansard 25 June 2007

2. 'Hope Betrayed: An analysis of women victims of trafficking and their claims for asylum', POPPY Project and Refugee Women's Resource Project at Asylum Aid, February 2006, available at: http://www.eaves4women.co.uk/POPPY_Project/Documents/Recent_Reports/Hope%20Betrayed.pdf [Accessed on 29th May 2008].

3. The Act makes employing an illegal worker an offence punishable by a prison term of not more than two years and/or a fine. Available at: http://www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060013_en.pdf. [Accessed on 29th May 2008.]

4. UKHTC website: <http://www.ukhtc.org/history.htm>. [Accessed on 27th May 2008]

3. OVERVIEW OF THE NEW ASYLUM MODEL

3.1 Background to the New Asylum Model

In February 2005, the Home Office announced that it would be introducing a new system for processing asylum applications, as part of its five-year strategy for asylum and immigration⁹. The Government described the benefits of the new system as ensuring that 'greater numbers of successful asylum seekers will benefit from swifter decision-making while those with unsuccessful claims will be removed more quickly'¹⁰. This was to be achieved by introducing shorter timescales for gathering evidence and making decisions on asylum claims, assigning responsibility for individual asylum applications to specific NAM 'Case Owners' within the UK Border Agency (UKBA), previously known as the Border and Immigration Agency¹¹, and introducing more stringent requirements for asylum applicants to keep in regular contact with UKBA staff at every stage of the asylum determination process.

The Home Office began to apply the NAM processes to new asylum applications from mid 2005 onwards, as it established regional offices across the UK for NAM staff. Since March 2007, every new asylum application has followed the NAM process. However, because the POPPY Project participated in an initial pilot of the scheme, POPPY service users have been processed under the NAM since 1 January 2007.

3.2 The rationale behind the New Asylum Model

Since 2002, there has been a substantial reduction in the number of asylum applications received in the UK¹². However, public and political confidence in the asylum system remains low, and the integrity of the asylum system has continued to be frequently called into question¹³. As the number of applications has reduced, attention has increasingly focused on the inefficiencies of the system for processing asylum applications, such as the length of time taken to resolve applications and failure to enforce the removal of those found not to be in need of international protection, as well as the quality and consistency of decision-making.

In response to such concerns, the Government has introduced a raft of measures aimed at reducing the perceived incentives for claiming asylum in the UK and enabling the Home Office to take a faster and firmer approach to those who seek international protection. By introducing the NAM the Home Office has pledged to:

- Ensure that a higher percentage of asylum seekers whose claims fail are removed from the country quickly;
- Maximise deterrents against unfounded applications;
- Ensure that asylum seekers who are genuine refugees have their claims settled quickly and accurately and are then granted leave to remain in the UK;
- Improve cost effectiveness, including reduced support costs¹⁴.

An improvement in the quality of initial decision-making has also been emphasised to external stakeholders as one of the key intended outcomes of the new system. The quality of decision-making on asylum applications has long been an area of concern to advocates within the asylum/refugee sector. Since 2003, the United Nations High Commission for Refugees (UNHCR) has been working with the Home Office on an innovative project to improve the quality of initial decision-making on asylum applications, through its Quality Initiative project. The Home Office has taken on many of the recommendations

made by the UNHCR in the course of introducing the NAM. For example, NAM Case Owners have been recruited at a higher grade and salary than previous asylum decision-makers, and consequently external candidates are required to have a higher level of qualifications than before. A new 55-day training course was developed for NAM Case Owners – considerably longer than the previous training offered to asylum decision-makers – and some external organisations have also been invited to provide training sessions to NAM Case Owners¹⁵.

A NAM Quality Team was also established by the Home Office in order to oversee quality assurance monitoring and develop initiatives for improving the quality of decision-making. As part of this, a proposal for an early and interactive role for legal advisers during the asylum determination process was developed, in order to 'frontload' resources into the initial decision rather than the appeal stage. This was piloted by the NAM teams in Solihull during 2007. Under this model, applicants were expected to submit a witness statement before their substantive asylum interview. This is used to inform discussions between the Case Owner and the applicant's legal representative, and enables Case Owners to prepare for the interview and ensure that it focuses on the 'core issues' of the claim rather than those aspects which are not in dispute. The pilot is currently being evaluated before a decision is taken on whether to apply it across the UK.

3.3 Key features of the New Asylum Model process

Faster decision-making had already been applied to those asylum applications processed via the detained fast track at Oakington Immigration Removal Centre since 2000. Similar processes (but faster still) were subsequently introduced at Harmondsworth and Yarl's Wood Immigration Removal Centres in 2003 and 2005 respectively. The NAM has sought to expand on these practices by applying them to non-detained cases as well. The new system differs from the previous non-detained asylum determination process in several key respects:

End-to-end management by single Case Owner

Previously, staff in different departments of the UKBA would deal with each application as it progressed through the various stages of the asylum process. Under the NAM, each asylum application is allocated to a specific UKBA Case Owner at the outset, who retains responsibility for the case until the applicant is granted protection or removed from the UK¹⁶. The Case Owner's tasks include conducting the asylum interview, making and serving the decision and presenting any ensuing appeal, as well as overseeing financial/accommodation support arrangements and issues relating to the applicant's removal, such as their re-documentation. Case Owners are based in regional asylum teams, in areas close to where the asylum applicant is accommodated. They are expected to be easily contactable by the asylum applicant or their legal representative, and as a result, it is anticipated that they will have a better understanding of each applicant's circumstances and ensure greater efficiency in the processing of their claim.

Faster decision-making

Before the NAM there was a general expectation that initial decisions would be made within two months of the application being submitted, and that any appeals would be concluded within the following four months. The NAM has introduced faster timescales for making initial decisions and more stringent targets for concluding cases. Adult asylum applicants are no longer required to submit a Statement of Evidence Form (SEF), and therefore the substantive asylum interview with their asylum Case Owner is their primary opportunity for setting out their reasons for claiming asylum. Initial decisions are expected by the 30th working day after the application was lodged and the overall target is to conclude cases within six months. Although Case Owners have the discretion to vary these decision-making timescales depending on the individual circumstances of the case, no formal guidelines for when it may be appropriate to exercise such flexibility have been issued¹⁷. The UKBA is working to a set of incremental targets over the next three years, and intends that 90% of all asylum applications will be concluded within six months by the end of 2011. Cases which do not have a right of appeal in the UK are subject to considerably shorter timescales (decisions are expected around working day 10-11), and those found

9. 'Controlling our borders: Making migration work for Britain. Five year strategy for asylum and immigration', Home Office February 2005, available at: <http://www.archive2.official-documents.co.uk/document/cm64/6472/6472.pdf> [Accessed on 29th May 2008]

10. 'The New Asylum Model: Swifter Decisions – faster removals', Home Office press release, 18 January 2006, available at: <http://press.homeoffice.gov.uk/press-releases/new-asylum-model-swifter-decisio> [Accessed on 29th May 2008]

11. The UKBA is an Executive Agency reporting to the Home Office. References to the UKBA throughout this report should be taken to refer to the UKBA, as well as its predecessor, the Border and Immigration Agency.

12. Asylum Statistics United Kingdom 2006, Home Office Research, Development and Statistics Directorate, 21 August 2007, available at: <http://www.homeoffice.gov.uk/rds/pdfs07/hosb1407.pdf> [Accessed on 29th May 2008]

13. See, for example 'Fit for Purpose Yet? The Independent Asylum Commission's Interim Findings', Independent Asylum Commission, March 2008

14. *supra* n9 above.

15. The Home Office has also stated an intention to introduce an accreditation system for its asylum Case Owners, to be comparable with the level of accreditation required of asylum seekers' legal advisers, although this has not yet been implemented.

16. This reflects a recommendation made by organisations in the asylum sector since before the introduction of the NAM. See 'Providing Protection in the 21st Century', Asylum Rights Campaign 2004, p.27

17. Although guidelines for exercising flexibility were issued to Case Owners who participated in the Early Access to Legal Advice Pilot in Solihull.

to be the responsibility of another EU Member State can expect to be immediately returned to that state rather than receive a decision on their claim from the UK. Those which are processed via the detained fast-track can expect to receive a decision within three to four days of submitting their asylum claim, and have their appeal determined by working day 9-10.

Closer contact management and use of detained fast track

Under the NAM, contact management measures such as electronic tagging, voice recognition and physical reporting to UKBA staff are applied to all applicants at all stages of the asylum process, depending on the perceived level of risk of absconding. In addition, some applicants are held in detention while their claim is assessed under the detained fast track processes at Oakington, Harmondsworth and Yarl's Wood Immigration Removal Centres. The Government intends that 30% of all new asylum applications will be processed via detained fast track routes in the future¹⁸.

3.4 Evaluation of the New Asylum Model

The official asylum statistics have not distinguished between asylum applications made before and after the introduction of the NAM, and since the NAM was implemented incrementally it is difficult to make objective comparisons about the impact that the new process has had on the speed and quality of decision-making. There has also been little qualitative research by the UKBA or any other Government departments into the impact of the NAM so far.

Several organisations in the asylum/refugee sector have undertaken research into the impact of NAM processes. Although none have focused on the implications for trafficking cases, many of their findings nevertheless have relevance to this particular group of asylum seekers.

In February 2006, in response to requests from external asylum stakeholders, including RWRP, the UKBA NAM Quality Team agreed to examine a month's intake to the female detained fast track process in Yarl's Wood Immigration Removal Centre in order to determine whether the cases were handled in accordance with the gender Asylum Policy Instruction (API)¹⁹. This research identified that ten out of the 45 cases referred to the detained fast track process that month raised complex issues related to the gender API (including trafficking in some cases). The report recommended that a more robust referral mechanism for the detained fast track be identified, for better identification of potential gender-related claims which are not suitable for fast-track processes. It also recommended the establishment of "a specific and detailed training programme for all Case Owners in NAM, which deals with gender-related issues in the asylum process and ensures all Case Owners are aware of their obligations under the Gender API"²⁰. In September 2007, Bail for Immigration Detainees published its own research into women's experiences of the detained fast track process at Yarl's Wood²¹, which found that complex gender cases (including trafficking) were still being inappropriately referred to the detained fast track process.

The Refugee Council published the results of a survey of their clients' experiences of the NAM in January 2008²². The following encouraging comment was made:

["There are some good features within the NAM and we anticipate that the system should improve as Case Owners and others become familiar with the new processes and procedures"](#)²³.

While recognising these positive aspects, the findings also identified some general areas of concern. These include accounts of the Case Ownership model not working in practice, difficulties arising from the speed of the process, difficulties in accessing legal advice (particularly in advance of the substantive interview) and restrictive reporting requirements.

18. *supra* n9 above.

19. 'Yarl's Wood Detained Fast-Track Compliance with the Gender API: A Report by the NAM Quality Team', Home Office August 2006

20. *Ibid* p12

21. 'Refusal Factory: Women's experiences of the detained fast track asylum process at Yarl's Wood Immigration removal centre', Bail for Immigration Detainees (BID), September 2007 available at: <http://www.statewatch.org/news/2007/sep/bid-refusal-factory-07.pdf> [Accessed on 29th May 2008]

22. 'Asylum seekers' experiences of the New Asylum Model', Refugee Council, January 2008

23. Summary of the report, available at: <http://www.refugeecouncil.org.uk/policy/position/2008/NAMmonitoring.htm>. [Accessed on 29th May 2008]

The fourth report of the UNHCR Quality Initiative included some observations about the quality of decision-making in NAM cases, based on an audit of a small number of NAM decisions (including detained fast track cases). While welcoming the introduction of the NAM, and noting that it had observed some good practice, the UNHCR nevertheless raised concerns that "the assessment of credibility and establishing the facts of an asylum claim is a problem area for a significant proportion of NAM decision makers"²⁴. It also reiterated recommendations that gender-sensitive interviewing should be automatic, and applicants' preferences regarding the gender of their Case Owner and interpreter be sought at the initial screening stage (since January 2008, following lobbying by RWRP and other organisations, asylum applicants have been asked during their screening interview if they have a preference regarding the gender of their Case Owner).

These concerns have since been echoed by the Independent Asylum Commission as part of its inquiry into UK asylum policy and practice. Issues raised in its initial findings included concerns about the "...lack of consistency in the quality of first-instance decision-making" and that the "workloads of New Asylum Model caseworkers may be too high"²⁵; that "the Government's own gender guidelines are inconsistently observed"; that "women are being wrongly selected for detained fast track against the guidelines in the Asylum Policy Instructions"; that "women's cases based on sexual violence are not properly presented under the fast-track system" and that "gender-specific claims for asylum such as Female Genital Mutilation and trafficking are not adequately addressed by the asylum system"²⁶.

24. 'Quality Initiative Project Fourth report to the Minister', United Nation's High Commissioner for Refugees (UNHCR) January 2007, p.4-5 available at: <http://www.bia.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/unhcrreports/qualityinitiative/unhcrreport4.pdf?view=Binary> [Accessed on 29th May 2008]

25. *supra* n13, p.41

26. *Ibid*, p.83

4. RESEARCH FINDINGS: PROCEDURAL ANALYSIS OF THE NEW ASYLUM MODEL

This chapter focuses on the procedures followed in the NAM. POPPY senior support workers and service users were positive about several key aspects of the procedures, particularly cases being assigned to a single Case Owner; being able to contact the Case Owner; and the Case Owner's responsiveness to requests for flexibility according to the circumstances of individual cases. However, there were some aspects of the NAM framework that were not felt to be appropriate for cases involving women who have been trafficked for sexual exploitation (and by extension, those who have experienced other forms of gender persecution), such as the reliance on the substantive interview and the potential speed with which decisions could be made as reflected by the indicative timescales. It also became apparent that not all of the potential benefits of the NAM process were being realised because NAM processes are not always strictly adhered to in practice.

4.1 End-to-end management by single Case Owner

Consistency

The appointment of a single Case Owner to each case is a welcome improvement on the previous asylum determination process. Consistency is very important for women who have been trafficked. It prevents a woman from having to repeatedly disclose aspects of her case to different officials, which can be extremely distressing. However, the findings of this study demonstrate that the single Case Owner approach is not always implemented in practice, either because the Case Owner delegates responsibilities to other NAM staff, or because the Case Owner may change during the course of a claim.

The Case Owner changed in more than half (n=13) of the 25 cases in this sample, and nine of the 14 women who were interviewed said that they had not seen their Case Owner consistently throughout the NAM process, although in only four of these cases had their Case Owner officially changed.

"K has never met her Case Owner. She has met two different people. One stepped in when the original Case Owner was away, and the second she met because she was the leader/manager of all of the Case Owners. Since then I have only ever corresponded with that team manager because the Case Owner never seems to be in or is off sick".
POPPY senior support worker

In theory, an asylum applicant will meet their assigned Case Owner initially at the first reporting event, where the asylum process is explained to them. However, half of the women interviewed in our sample (seven out of the 14) reported meeting their Case Owner for the first time at their substantive interview. POPPY service users and support workers considered that it is important for POPPY clients to meet their Case Owner at the first reporting event. It can help to build relations of trust between the applicant and Case Owner and assist the woman to feel more comfortable during their substantive asylum interview.

"It is better if you meet your Case Owner in this first place because it makes it easier for you to talk the second time. The first time I met her [at the substantive interview] I felt afraid, very scared, so I couldn't talk."
Interview with POPPY service user

Accessibility

One of the intended benefits of allocating each asylum applicant a single Case Owner was that it would enable regular communication between the Case Owner, the applicant and the applicant's representatives, and ensure that all parties remain fully informed of the status of the case and applicant's circumstances. POPPY senior support workers agreed, during focus groups, that in the majority of cases Case Owners were accessible and comments from POPPY senior support workers who were able to contact the Case Owner were positive. The general consensus was that this was an improvement on the previous system where the Home Office decision-maker was rarely accessible. For example, having contact details of Case Owners has enabled support workers to negotiate changes to the frequency with which women have been expected to report to UKBA staff while their claim is being processed, and has facilitated access to the managers of the Case Owners when there are problems that need to be resolved.

"In each of the cases I have worked on in NAM I have had someone to contact and I have been able to negotiate dates and times. And each time, even with reporting restrictions, I just had to pick up the phone. And if the Case Owner is not in, there is usually someone able to give information about which stage the case is at."
POPPY senior support worker

However, the extent to which these benefits are realised in practice does still appear to be dependant on the individual Case Owner, as the quote below demonstrates. Support workers also stated that in cases where the Case Owner had changed, which appears to happen quite frequently, accessibility could sometimes become problematic.

"S was re-trafficked from Moldova seven times, including twice to the UK. She was referred to the POPPY Project by an immigration officer who had identified her as a potential victim of trafficking. I attempted to contact her Case Owner on five separate occasions over the course of a three-week period to discuss her claim. I left messages but did not receive any calls in return".
POPPY senior support worker

Feedback from POPPY service users suggested that they had had more difficulties contacting their Case Owners than senior support workers had. Applicants and their legal representatives are supposed to be given the contact details of their Case Owner at the first reporting event²⁷. Despite this, only five of the 14 women interviewed reported having their Case Owner's contact details in writing²⁸. A further six women said when interviewed that they had wanted to contact their Case Owner but of these, only three were able to do so.

Provision of gender-specific staff

Since January 2008, the UKBA has proactively asked asylum applicants during their screening interview whether they have a preference regarding the gender of their Case Owner and interpreter²⁹. Applicants are also given the opportunity to state a preference during the first reporting event. Applicants are informed that the UKBA will accommodate their request as far as is "operationally possible". The UKBA will also seek to provide an interpreter of the same gender as the Case Owner where applicants have expressed a preference. However, if the UKBA is unable to accommodate the request for a specific Case Owner or interpreter, applicants are informed that their interview will not be postponed³⁰.

The gender of the Case Owner was identified in 21 of the 25 cases analysed in this study. Nineteen were women (in one of these cases a male Case Owner was originally appointed but it was subsequently acknowledged that a mistake had been made) and two were men. POPPY senior support workers confirmed that in the majority of cases efforts were made by Case Owners to arrange for a female interpreter to be present at the interview stages, and in cases where a male interpreter had been booked, the interview was postponed (in one case the decision to postpone the interview was instigated by the Case Owner's manager). The following statement from one of the women in the sample group demonstrates why this issue is so important:

"I was interviewed by a man from the Home Office and I found being asked about my experiences by a man very difficult. He did not seem to care at all about what he was asking me or what I was telling him. I was too scared to complain because I believed he would refuse my case if I did"³¹.
POPPY service user 'G', Nigeria

It is extremely positive to see that the vast majority of women in this research sample were allocated female Case Owners and interpreters.

27. Home Office, APPU Guidance, www.bia.homeoffice.gov.uk. [Accessed on 29th May 2008]

28. Of the 14 women interviewed, six said they knew the name of their Case Owner, three said they didn't know, and three said they didn't know the name of their Case Owner. Of those that didn't know, one wanted to contact her Case Owner during the determination process.

29. This was introduced in response to concerted lobbying by NGOs including Asylum Aid. Before this time, asylum applicants could state a preference regarding the sex of their Case Owner or interpreter, although they were not directly informed by the UKBA of their right to do so.

30. Although some NAM regions have adopted stronger practices on this issue. The standard practice in Cardiff is to automatically allocate female Case Owners to any female applicant, for example.

31. Appellant statement of 'G', Nigerian, dated 3rd September 2007.

4.2 Speed of decision-making

Measures designed to promote fast decision-making

Another key procedural development implemented by the NAM is faster timescales for making initial decisions and targets for bringing cases to a conclusion. Alongside this is the assertion that: “the importance of the asylum model is that, from the moment a person makes an application, they will have the fullest opportunity to disclose all the information on which an informed decision will be made³².”

The promotion of timely decision-making is in the interests of all parties in the asylum process. However, it is imperative that the speed of decision-making is not at the expense of good quality decision-making. Furthermore, it is of the utmost importance that victims of trafficking are afforded sufficient respite before they are expected to provide the detailed information that a Case Owner needs in order to make an informed decision on their asylum claim. Women who have been trafficked have been found to emerge from their trafficking situation with multiple and often severe health problems from which they need time to recover³³. With this in mind, aspects of the NAM design and the indicative timescales for decision-making, as referred to in section three, are a matter for concern.

When a woman is referred to the POPPY Project she is afforded a four-week period of reflection, during which time she is under no obligation to take steps to contact the police. If she wishes to claim asylum she is not under any obligation to do so until this four-week period is over, but immigration services will be notified of her acceptance onto the scheme. This reflection delay is in line with the recommendation made by the European Convention on Action Against Trafficking in Human Beings, which the UK Government has signed and intends to ratify by the end of 2008. A reflection delay is considered essential for women who have been trafficked, many of whom will be unable or unwilling to disclose their experiences to the authorities straight away. A reflection delay ultimately increases the likelihood of obtaining a more accurate account of women’s experiences³⁴.

However, women who have been trafficked but who are not supported by POPPY are not given the opportunity to have such a reflection period, and it is unclear how decision-making timescales (for both detained and non-detained cases) might incorporate such a reflection period in the future. RWRP and the Anti-Trafficking Legal Project (ATLEP) have previously suggested that guidance be issued so that in cases where an allegation of trafficking is made, Case Owners must ensure that timescales are amended in order to allow a 30-day reflection period, and delay the substantive asylum interview if necessary. In response, the UKBA has stated that it was considering its approach to this issue, but “we are involved in an on-going process to reform the asylum system to deliver faster and fairer decisions... We must consider how any new proposals to meet our obligations under the convention can be delivered within that context³⁵”.

The NAM has removed the requirement that asylum claimants should submit a Statement of Evidence Form (SEF) prior to the asylum interview, although it remains open to the applicant’s representative to submit a written witness statement prior to an initial decision. Removing the SEF was supposed to facilitate fast-decision-making by enabling the substantive asylum interview to occur sooner after the asylum claim had been made. POPPY senior support workers raised concerns about the impact this has had on women who have been trafficked, as they have to recount their experiences in full at the substantive interview, which can be very upsetting and traumatic. Women may also be asked to recount details of things which are not even in dispute by the Case Owner³⁶.

32. Baroness of Scotland of Asthal in the House of Lords, Wednesday 2nd May 2007. <http://www.theyworkforyou.com/lords/?id=2007-05-02b.1059.3> [Accessed on 3rd April 2008]

33. Zimmerman, C et al, *Stolen Smiles: The Physical & Psychological Health Consequences of Women & Adolescents Trafficked in Europe* London School of Hygiene & Tropical Medicine (2006) available at: <http://www.lshtm.ac.uk/hpu/docs/StolenSmiles.pdf> [Accessed on 29th May 2008]

34. *Ibid.*

35. Letter from RWRP and ATLeP to UKBA, 3rd August 2007 and response from Matthew Coats, Strategic Director, Asylum 3rd October 2007

36. Similar concerns have been raised by other stakeholders in the asylum sector. See, for example, the 4th report of the UNHCR Quality Initiative. Under the Solihull Pilot, applicants are expected to submit a ‘witness statement’ before their substantive asylum interview. This is used to inform advance discussions between the Case Owner and applicant’s legal representative, and enables Case Owners to prepare for the interview and ensure that it focuses on the ‘core issues’ of the claim rather than aspects that are not in dispute. The UKBA is currently evaluating the benefits of this approach.

“I think sometimes the women are more overwhelmed by the way the interview is conducted, rather than pace of it. I know the old way, before NAM, they were given a statement and in the majority of cases they were not asked to go through the story again. Now more often than not the women are asked to go through everything again in the interview.”

POPPY senior support worker

A concern was also raised that preparing the statement used to take several sessions with the legal representative, but claimants now have less time for this. They are also expected to be able to give all the necessary information in one or two occasions with the Case Owner. On one occasion, a request for more time for the woman to prepare a statement with her legal representative was refused by the Case Owner. Women may not feel ready to disclose all their experiences by the time of their scheduled interview, and consequently the Case Owner may not have all the facts of the case available before making a decision on the claim.

“J’s interview took more than seven hours. I was there with her and she was clearly distressed. I had to ask several times for breaks and we didn’t get a proper lunch break. The Case Owner appeared to show no empathy. She didn’t seem to realise that it was traumatic for ‘J’ to re-live her story. ‘J’ was crying and she said she felt faint and sick and had a headache. The Case Owner asked only once if she wanted to continue with the interview but ‘J’ said she wanted to get it over with. I think she [the Case Owner] should have cancelled the interview and re-scheduled it for another time. She wanted graphic details of the rape so she could get it into her mind that it was real. And after getting all those details out of ‘J’, she conducted the interview in a really hurried way - “come on, I’ve got to finish” - and then still gave her a negative. It depends on the Case Owner, and how much the woman has come to terms with her own trauma, but disclosure can take years. Sometimes we get new details from a woman two years on.”

POPPY senior support worker

Speed of decision-making in practice

i) Flexibility

Notwithstanding the above concerns, it has been reassuring to see evidence that Case Owners have been willing and able to exercise flexibility in the handling of the cases within our sample, particularly in light of the emphasis that the public performance targets place on meeting the fast timescales for decision-making. Nine of the 14 women interviewed by POPPY for this research said they had asked for more time to prepare their case at various stages in the determination process, and this request was granted in eight cases. The reasons for requesting extended decision-making timescales included needing more time to prepare a statement (three cases); securing release from the detained fast track (two cases); and obtaining an expert report (four cases).

“I have had a Case Owner accept my report a day late, she was so keen to have a POPPY report.”

POPPY senior support worker

Nine cases within the overall sample of 25 are still waiting for an initial decision. In four of these cases, the complexity of the issues involved and the need for more time in order to make a decision have been cited by the Case Owner as the reason for the delay. However, some POPPY Support Workers were sceptical of the extent to which Case Owners were actively working on these cases, or whether they had simply been caught up in administrative delay (see following section).

“I haven’t had any case dealt with within 30 days. Not one. In general, we are told ‘this is a complex case, and therefore needs more consideration’. That is the answer we get.”

POPPY senior support worker

It is extremely positive to see examples of Case Owners recognising the importance of adopting a flexible approach in cases which are invariably complex, and responding appropriately to cases involving vulnerable and traumatised women, such as by deferring appointments on account of the woman’s mental health needs.

However, in spite of a demonstrable willingness to grant flexibility at the initial decision stage, this is often still inadequate time to ensure that all facts are available to the decision-maker prior to the appeal stage, causing frustration among POPPY support workers and service users. Instead, cases continue to go to appeal, which adds to the total time taken to resolve a claim, prolonging the uncertainty and trauma for the women involved, and wasting public funds. The interim period between an initial refusal and appeal hearing allows the client to write a more detailed statement, enables the POPPY Project to

write up a detailed report, and provides the opportunity for other supporting evidence to be assembled. Legal aid funding arrangements also affect this, as one senior support worker noted:

“When you appeal, you get more money and can commission a report, look at the situation on the ground, get country experts. It all adds to the case. At the beginning, there isn’t much money³⁷.”
POPPY senior support worker

Looking at this evidence, it would seem to be premature to interpret these examples of willingness to extend timescales as evidence of the principle of ‘frontloading’ resources into the initial decision stage being implemented in practice. The fact that all of the cases in our sample that have received a decision were refused at initial decision stage, regardless of the length of time taken to make the decision or whether requests for flexibility had been previously granted, suggests that a willingness to grant extra time before the initial decision stage is of limited benefit if it does not affect the approach to decision-making. This is considered further in section five, below.

ii) Administrative delay

It is of concern to note that in many of the cases reviewed in this sample, the speed of decision-making was delayed in part due to poor management and administrative inefficiencies rather than in response to a specific request for more time. It is important to stress that while flexibility is essential in cases involving trafficking (and may well result in lengthening the process) this should not be confused with undue delays which, in the majority of cases, are extremely upsetting and distressing for the women involved who invariably, once engaged within the asylum process, wish to have their cases resolved and their status regulated without any unreasonable delays.

“They keep sending letters that I’m going to meet my Case Owner or be interviewed and then I’m not. They cancelled because they didn’t have a working tape recorder but they were told beforehand that it would need to be recorded. I was really prepared for the interview and wanted to get it finished – now I feel more pressure and feel upset. It is all about their convenience, not mine – they don’t care about me.”

POPPY service user ‘O’, Nigeria

Analysis of the speed of decision-making on the cases in our sample demonstrated that NAM timescales began to slip from very early on in the asylum process. For example, the UKBA prescribes that the first reporting event should take place within three days of the initial screening interview. Of the 12 women in our sample for which we were able to capture both the date women initially claimed asylum and the date of their first reporting event, none took place within this time.

While in some cases this could be attributed to specific requests from POPPY support workers or the women’s legal representatives, we came across several examples of avoidable delays; for example the wrong interpreter was booked; the tape recorder was not available; because the woman did not receive confirmation of the appointment in time.

Case Study 1

‘O’ was trafficked from Nigeria where she had experienced sexual violence and a forced abortion at the hands of a family member. On arrival in the UK she was forced to work as a prostitute. She was arrested and detained trying to leave the country and claimed asylum in July 2007. Her substantive interview took place more than three months later. Initially, the delay was due to her Case Owner being sick. The second time, the interview clashed with her criminal hearing, and the final time it was cancelled because the NAM worker was unable to provide an Edo interpreter.

4.3 Detained fast track and non-immigration detention

“They scared me in detention and threatened to put handcuffs on my wrists. I didn’t want that.”
POPPY service user ‘N’, Chad

It is of concern to note that eight of the 25 POPPY cases in this research sample were initially processed in the detained fast track at Yarl’s Wood Immigration Removal Centre, with decisions being reached in as few as ten days³⁸. Putting such cases into the detained fast track is particularly inappropriate because women who have experienced gender-based harm will need time to build up trust in the officials who interview them. Interpreting their cases in relation to the Refugee Convention is complex and not suited to quick decisions.

37. POPPY Senior Support Worker

38. From the information available, the average length of time taken between a woman’s screening interview and receiving a decision on her claim was 18 days. This is based on the six fast-track cases we hold full details for.

Detention of women who have been trafficked contravenes international human rights law and current UKBA policy³⁹. However, the Suitability List for the Detained Fast Track process demands independent evidence of trafficking from a recognised organisation such as the POPPY Project in order for the woman to be released from accelerated procedures, and decision-making processes will not be suspended in order for such an assessment to be undertaken⁴⁰. This means that in practice, victims of trafficking may not be released from detention until after a decision has already been made on their asylum application, as demonstrated in the following case study:

Case Study 2

R was brought to the UK by an agent who imprisoned and repeatedly raped her. She escaped from the agent’s house some months later and found her way to an Asylum Screening Unit, which was closed. She slept outside and claimed asylum the following day. She was routed to the detained fast track at Yarl’s Wood, and was not released into POPPY’s care until eight days after her case had been refused.

In August 2007 RWRP and ATLEP wrote to the UKBA to suggest that as soon as notice is received from the POPPY Project that they intend to assess a woman in the detained fast track, the case is taken out of the process. In response, however, the UKBA stated that it would not be possible to release a woman from the detained fast track until after she had been interviewed, but that if such an assessment does conclude that an individual has been trafficked, “we already try to release them as quickly as possible, usually within 24 hours⁴¹”.

The information we have available about the detained cases in our sample indicates that six out of the eight cases were released from the detained fast track only after a decision had been taken on their asylum claim. Women in this research sample were detained on average for a period of 36 days before being released⁴². In six cases, women were released from detention following representations from the POPPY Project, and in a further case following representations from the United Kingdom Human Trafficking Centre (UKHTC). One woman remains in detention at the time of writing.

Case Study 3

‘Y’⁴³, a child orphan from Nigeria, was trafficked to the UK and forced into prostitution after fleeing domestic violence. She was arrested by immigration officials two years later and sentenced to nine months imprisonment, having been found in possession of a false passport. Prior to her transfer to Yarl’s Wood she applied, without legal representation, for asylum, based on her trafficking history. Her asylum and screening interview were conducted on the same day and a decision was made rejecting her application just seven working days later.

The experience of ‘Y’ in Case Study 3, above, suggests that women feel overloaded by the amount of information they have to take in, combined with the number of processes they must go through in the space of a few days. As a result they are often confused about their situation and seem to be disengaged from the asylum process. This hinders the ability of Case Owners to properly consider the facts of the case. The speed of the process also creates problems for legal representatives in terms of having sufficient time to obtain evidence and to prepare their client’s case. They may feel it is imperative to seek further information, but simply not have time to do it, and the asylum seeker will suffer as a result.

39. *Prisoners with No Crime: Detention of Trafficked Women in the UK*, Stephen-Smith, S, Eaves POPPY Project, June 2008. At the time of publication, the current Asylum Policy Instruction (API) on Victims of Trafficking is being revised.

40. Strategic Director for Asylum, Border and Immigration Agency to Asylum Aid and the Anti-Trafficking Legal Project, 03 10 2007.

41. *Ibid.*

42. At the time of writing, the exact length of detention was unknown in two cases.

43. Y’s combined bail/asylum appeal hearing was heard on 3rd March 2008 and we are currently awaiting the outcome.

5. RESEARCH FINDINGS: SUBSTANTIVE ANALYSIS OF NEW ASYLUM MODEL DECISION-MAKING

This chapter presents some examples that demonstrate initial decision-making in cases involving women who have been trafficked for sexual exploitation. It is based on an in-depth consideration of the reasons for refusal letters and appeal determinations of six cases that went through the initial decision and appeals stages⁴⁴. Of the cases considered in this section, two received an initial decision while in the detained fast track at Yarl's Wood, and the other four were handled from the outset by the central London office. Four of the refusal decisions were overturned by the Asylum and Immigration Tribunal (of which one is due for reconsideration), and two were dismissed (one non-detained, and one which was originally a detained fast track case – this one is also pending a reconsideration appeal).

While such a small sample cannot be said to be representative of decision-making in all trafficking cases, the concerns raised in this chapter are consistent with those expressed in the report *Hope Betrayed*⁴⁵. This report was based on research conducted prior to the implementation of the NAM and found that women who were being supported by POPPY were all refused at the initial decision stage, but had a success rate six times higher than the national average at appeal stage.

5.1 Convention grounds: membership of a Particular Social Group

In order for a claimant to qualify as a refugee under the terms of the Refugee Convention it is not only necessary to show a well-founded fear of persecution from state agents, or from non-state agents against whom the state cannot or will not offer the claimant effective protection; it is also necessary to show that the persecution feared is for one of the named Convention reasons – race, religion, nationality, political opinion or membership of a Particular Social Group.

This last category – membership of a Particular Social Group – has over the years become something of a miscellaneous or 'other' category for claims which do not easily fall within the other Convention grounds. It has also become the *de facto* test category for developing international and domestic case law in the area of gender-related persecution.

It is important to note that the social group should exist independently of the persecution itself. In Paragraph 15 of the House of Lords decision in *Fornah (Secretary of State for the Home Department v. K)* [2006] UKHL 46 (18 October 2006), Lord Bingham referred to the UNHCR's definition of what a Particular Social Group is:

"A Particular Social Group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights⁴⁶."

By quoting the UNHCR definition, this became case law. Lord Bingham concluded paragraph 15 by stating:

"The UNHCR accepted that a Particular Social Group could not be defined exclusively by the persecution members' suffering or fear, but also accepted the view ... that persecutory action towards a group may be a relevant factor in determining the visibility of a group in a particular society⁴⁷."

More recently, the country guidance case *SB (PSG – Protection Regulations – Reg 6) Moldova CG* [2008] UKIAT 00002 found that "former victims of trafficking for sexual exploitation" are capable of being a member of a Particular Social Group, on the basis that they share the common characteristic of being trafficked, and since it does not necessarily follow that their fear of future persecution will be for the same reasons as their previous persecution.

44. Six files were used since it was not possible to trace a complete set of papers for the other cases that had been through the initial decision and appeals stage.

45. *supra* n2 above.

46. UNHCR, "Guidelines on International Protection: 'Membership of a Particular Social Group' within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees", HCR/GIP/02/02, 7 May 2002 (hereafter "UNHCR Guidelines on Membership of a Particular Social Group"), available at <http://www.unhcr.org/cgi-bin/texis/vtx/publ/openssl.pdf?tbl=PUBL&id=3d58de2da>. [Accessed on 29th May 2008]

47. *Zainab Esther Fornah v. Secretary of State for the Home Department*. [2005] EWCA Civ 680. United Kingdom: Court of Appeal (Civil Division). 9 June 2005. Online. UNHCR Refworld, available at: <http://www.publications.parliament.uk/pa/ld200506/djudgmt/jd061018/sshd.pdf> [Accessed 29th May 2008]

Consequently, while being trafficked for sexual exploitation is not, in itself, a ground for refugee status, some trafficked women have been able to establish a Convention reason and have valid claims to refugee status.

Four of the six cases analysed in this research sample were refused in part because their claim was not deemed to engage the Geneva Convention⁴⁸. The arguments used by Case Owners to justify this assertion revealed a lack of awareness of, or failure to apply, relevant case law relating to the Particular Social Group category. Reference to any submissions that the women's legal representatives may have made prior to the initial decision about a Particular Social Group could not be found in any of the Reasons For Refusal letters.

Case Study – refusal on basis of no Convention ground

'T' was re-trafficked to the UK from Thailand by traffickers after she had previously been returned to Thailand by the UK immigration authorities. She escaped from the traffickers and claimed asylum, but her claim was refused. The reasons for refusal letter stated:

"The reason you have given for claiming a well-founded fear of persecution under the terms of the 1951 United Nations Convention relating to the Status of Refugees is not one that engages the United Kingdom's obligations under the Convention... Thai women who have endured trafficking are not considered to be a social group for the purposes of the 1951 United Nations Convention relating to the Status of Refugees."

It did not give any explanation of why trafficked Thai women are not considered to form a social group.

However at her appeal hearing, 'T's legal representative highlighted the case of *SB* and the Immigration Judge accepted that:

"This Appellant can be described as being a member of a Particular Social Group and thus engages the 1951 Convention Relating to the Status of Refugees."

Based on the analysis of reasons for refusal letters, Case Owners appear to have limited knowledge of case law in relation to Particular Social Groups. Where case law was cited in the Reasons For Refusal letter, it was generally limited to the cases referred to in the Operational Guidance Notes for that country, and in no more detail than was provided there. In fact, in most cases the wording was identical to the Operational Guidance Note. On other occasions, including at appeal stage, country guidance cases for the particular nationality were relied upon, regardless of whether case law concerning an asylum seeker of another nationality or a higher court was more relevant to the particular circumstances of the case in question. This suggests that Case Owners have a superficial knowledge only of the case law beyond what is summarised in the internal guidance they are given for each type of claim. This is demonstrated in the following case study.

Case Study – failure to apply relevant case law

Although the Case Owner accepted that 'O' was a trafficked woman from Nigeria, her asylum application was refused on the basis that trafficked women do not form a Particular Social Group within the terms of the 1951 Geneva Convention. The case of *JO* [2004] UKIAT 00251 was cited in support of this position (*JO* found that trafficked women do not qualify as a Particular Social Group since it is the fact of their persecution that defines them as a Particular Social Group).

By the time 'O's case went to appeal, the case of *SB* (PSG – Protection Regulations – Reg 6) *Moldova CG* [2008] UKIAT 00002 had come out. This had accepted that former victims of trafficking are capable of being members of a Particular Social Group, and had given detailed consideration to the interpretation of Particular Social Group and why 'former victims of trafficking for sexual and non-sexual purposes' are capable of being members, and dismisses the reasoning in *JO*.

'O's legal representative cited *SB* in support of her argument that 'O' was a member of a Particular Social Group. However, the Home Office Presenting Officer, who was different from the Case Owner who had made the original refusal decision, did not make submissions about *SB*, but instead relied on another case – that of *AI (Nigeria) v SSHD* [2007] EWCA Civ 707. This stated that females in general in Nigeria do not constitute a Particular Social Group. *AI* concerned a Nigerian female whose claim was based on persecution for her religious beliefs.

48. Three of these cases were subsequently granted status at appeal, two of which in part because the Immigration Judge considered that they could in fact be classed as a Particular Social Group.

The Immigration Judge agreed that the facts of 'O's case were similar to those of SB rather than 'AI', and was satisfied that 'O' was a member of a Particular Social Group under the terms of the Geneva Convention.

'O's appeal was allowed on asylum and human rights grounds.

5.2 Engaging with the facts of the case

As already mentioned, our analysis also came across examples of Case Owners failing to consider how the circumstances of the individual claim might be distinguishable from the facts of the case law relied upon in their reasons for refusal. Case Owners are supposed to consider each claim on its own merits. However, analysis of the six cases in our sample raised concerns that in practice, excessive reliance is placed on the guidance issued to Case Owners (such as Operational Guidance Notes), at the expense of considering the facts of the individual claim, and how the two may be distinguished.

Case Study – failure to engage with the facts of the case

'M' travelled from Albania to Europe with her 'boyfriend.' She became pregnant and he forced her into prostitution in France. One of her clients helped her to escape and come to the UK where she claimed asylum, based on fear of harm from her family; societal discrimination in Albania as an unmarried mother forced into prostitution; fear that her previous trafficker or other criminal gangs may target her for re-trafficking; and lack of effective assistance from the state authorities.

The Reasons For Refusal letter states that 'M' would not be at risk of being re-trafficked and that there is a general sufficiency of protection against trafficking in Albania. It summarises the case of VD (Trafficking) Albania CG [2004] UKIAT00115 in support of this contention, in wording that is almost identical to the summary provided in the Operational Guidance Note on Albania.

However, at 'M's appeal, the Immigration Judge noted that VD was concerned with whether there was a real risk of trafficking to women per se in Albania, and set out a number of reasons why 'M's circumstances could be distinguished from VD. 'M's appeal was allowed on asylum and human rights grounds.

A failure to take the individual's circumstances into account was not only noticeable in terms of how Case Owners applied case law to the individual claim; it was also noticeable in the reasoning employed at all stages of assessing the merits of a claim against the objective evidence, including assessments of whether there was a risk upon return, a sufficiency of state protection or an internal relocation option available to the woman.

Case Study – distinguishing the facts of the individual case

In support of its contention that 'M' could relocate to another part of Albania, the Home Office cited the fact that Albanian law provides freedom of movement and that internal relocation in order to avoid localised traffickers would not be unduly harsh, in wording almost identical to the Operational Guidance Note on Albania (para 3.9.11).

However, evidence considered by the Immigration Judge at her appeal showed that women from a traditional north Albanian background such as 'M' are disowned by their family once abused, and that it would be difficult for 'M' to relocate to another area due to the size and structure of Albanian society and since she would be highly visible as a single mother.

When presented with expert evidence on this point at appeal, the Immigration Judge concluded that there would be no safe part of Albania where she could relocate, and in any case it would be unduly harsh to require her to do so "in the light of the prevailing cultural attitudes towards lone women, her particular vulnerability due to her mental health and the fact that she has a baby to look after".

'M' won her appeal against the Home Office decision and was granted leave to remain as a refugee.

5.3 Credibility

Credibility was challenged in four of the six cases that were considered in detail. Two of the four were subsequently found by the Immigration Judge to be credible (one of those refused now has an outstanding reconsideration appeal).

According to the relevant UKBA Asylum Policy Instruction, the burden of proof rests on the asylum claimant to demonstrate that their claim is credible⁴⁹. However, it is not always possible for trafficked women to provide evidence to corroborate a claim so written submissions made by women's lawyers and the information provided during substantive asylum interviews are often the only evidence available to Case Owners when determining women's claims for asylum. Credibility is one of the issues covered in the training that POPPY has provided to all four of the central London NAM Case Owner teams (see Appendix E).

The Home Office Asylum Policy Instruction on Gender Issues in the Asylum Claim states that: "Women who have been sexually assaulted may suffer trauma. The symptoms of this include persistent fear, a loss of self-confidence and self-esteem, difficulty in concentration, an attitude of self-blame, shame, a pervasive loss of control and memory loss or distortion. Decision-makers should be aware of this and how such factors may affect how a woman responds during interview⁵⁰".

The following case study suggests that this guidance is not always followed at the initial decision-stage.

Case Study – credibility and gender guidance

'M' was issued with a 'Supplementary Reasons For Refusal letter, which cited a number of "discrepancies and contradictions" between the initial statement prepared with her first solicitor, and information she subsequently gave during her screening and substantive asylum interviews. These discrepancies had led the Case Owner to disbelieve 'M's account.

The discrepancies included the fact that at her screening interview and substantive asylum interview 'M' said she had been forced by her boyfriend to work as a prostitute, but in the statement she had previously prepared with her solicitor, she had said that she ran away from her boyfriend the first time he took her to work as a prostitute. In addition, the written statement she had prepared with her solicitor "includes no dates from the point in your account when you claim to have left Albania and is therefore found to be vague and unbelievable".

At her appeal, 'M' explained that she had felt uncomfortable disclosing details of working as a prostitute to her initial legal representative, who was an Albanian man. The Immigration Judge accepted this explanation, noting that:

"The respondent's own policy instructions on gender issues in the asylum claim recognises the fact that a woman may not immediately disclose certain aspects of her claim due to feelings of guilt, shame and concerns about family dishonour".

The Immigration Judge also found that 'M's account of her journey to the UK was "broadly consistent", and that "the psychological evidence provides a reasonable explanation for any other minor inconsistencies in the appellant's account".

Section eight of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 requires that decision-makers interpret certain behaviours by the asylum applicants as damaging to their credibility. Behaviours to be taken into consideration include failure to show a passport when requested, use of false documents or destroying documents, or failure to claim asylum when in a safe third country.

In all four cases where credibility was doubted (out of a sample of six), section eight was also cited in the Reasons For Refusal letter as grounds for doubting the women's credibility.

49. Asylum Policy Instruction (API)/October 2006 Gender Issues in the Asylum Claim, available at www.bia.homeoffice.gov.uk/.../asylumpolicyinstructions/apis/genderissueintheasylum.pdf?view=Binary [Accessed 29th May 2008]

50. *Ibid.*

Case Study – damage to credibility

'R' escaped from her family home in Guinea after government security forces raided a political meeting that her parents were holding there. A friend of her father paid an agent to bring her to the UK. After passing through immigration control at Gatwick airport the agent told 'R' to give him her passport. He then took her to a house where she was imprisoned and repeatedly raped by an agent who sought to force her into prostitution.

'R's Reasons For Refusal letter stated:

"Since claiming asylum...you have failed to provide the Home Office with your passport...You claim that you gave the passport to [agent] as he asked you to. It is however not considered that you would hand over a document of such obvious importance just because someone asked you too [sic]"

Such reasoning overlooks the constraints that women who have been trafficked may be subject to. At appeal, the Immigration Judge accepted 'R's account of how she entered the country, and she was granted asylum on the basis of her political opinion and family's profile in Guinea.

6. CONCLUSIONS

Some of the procedural changes implemented through the NAM system have delivered improvements to the asylum process and this is to be welcomed. A noticeable cultural shift appears to have taken place in the way that Case Owners have responded to cases involving POPPY service users, as reflected by the general willingness to provide female Case Owners and interpreters and more flexible reporting arrangements for POPPY service users. It is to be noted that POPPY staff have provided training to the central London NAM teams on trafficking issues (see Appendix E).

However, there are some aspects of the NAM design that are felt to be inappropriate for cases involving women who have been trafficked for sexual exploitation (and by extension, those who have experienced other forms of gender persecution), such as the reliance on the substantive interview and the potential speed with which decisions could be made. It has also become apparent that not all of the potential benefits of the NAM process are being realised, because in practice, NAM processes are not always strictly adhered to.

Analysis of the cases in this sample suggests that the NAM has had no marked effect on the quality of initial decision-making on asylum applications involving women who have been trafficked for sexual exploitation. It is notable that the training provided by POPPY did not cover these legal issues⁵¹. An improvement in the quality of initial decision-making was emphasised as one of the key intended outcomes of the NAM, and therefore it is extremely disappointing to see that in spite of the extra investment in training and quality control measures, cases involving trafficked women are still regularly going to the appeal stage in order to have their need for international protection recognised. This prolongs the uncertainty and trauma for the women involved, and wastes public funds.

Despite the length of time taken to make a decision, and despite requests for flexibility previously being granted, the 12 cases in our sample that received an initial decision were all refused, suggesting that granting extra time before the initial decision stage has little impact on that initial decision. Relying on the appeals process to deal with complex issues such as Particular Social Groups calls into question the extent to which the UKBA does recognise the importance of frontloading in practice, and how much of an active role it wants Case Owners to play in exploring the merits of the individual claim at the initial decision stage, regardless of the enhanced training they may be provided with.

The size of the sample used in this research is small. However, these findings have implications for a wide spectrum of cases including gender persecution cases (women and gay men) as well as women who have been trafficked for sexual exploitation. The good intentions identified in the course of this research need to be built upon so that all asylum claims are considered fairly and accurately.

51. There was, however, a plan to provide training on this to specialist Case Owners, after the basic training had been rolled out to all Case Owners. POPPY would welcome the opportunity to provide such training in the future based on the findings in this report.

7. RECOMMENDATIONS

7.1 Procedural aspects of the New Asylum Model

Recommendation 1: reflection period for trafficked women

The NAM process and decision-making timescales should be altered in order to ensure that all victims of trafficking are able to have a reflection period, in line with the European Convention on Action against Trafficking in Human Beings.

Recommendation 2: gender-sensitive allocation of Case Owners

UKBA policy should be strengthened to ensure all women who have been trafficked for sexual exploitation (and other forms of gender persecution) are automatically allocated to a female Case Owner and interpreter. Interviews should be delayed if necessary.

Recommendation 3: removal from detained fast track

The detained fast track is incompatible with a gender-sensitive asylum process. While it continues, processes must be implemented to ensure that women who have experienced trafficking (or other gender persecution) are not routed to the detained fast track, or are removed from the detained fast track as soon as an allegation of trafficking or other form of gender persecution is made.

Recommendation 4: flexible approach to case management

The practice of flexibility should be formalised and there should be formal guidance on use of flexibility in all cases.

Recommendation 5: decreased reliance on interview for information-gathering

Vulnerable applicants, such as women who have been trafficked for sexual exploitation or who have experienced other forms of gender persecution, should be given the opportunity to submit a written statement in support of their asylum claim rather than be interviewed (in line with practices in the criminal justice system). Where aspects of the claim are not disputed, women should be spared from having to recount them at interview unnecessarily.

7.2 Decision-making in New Asylum Model

Recommendation 6: training

Enhanced training should be provided to all NAM staff on trafficking and the law, including approaches to credibility, application of the Asylum Policy Instruction on gender issues, and defining Particular Social Groups. There needs to be a system in place in order to provide ongoing training and to update Case Owners on relevant case law developments.

Recommendation 7: quality assurance

Monitoring and quality audit processes should take into account the complexities of trafficking cases and provide feedback to individual Case Owners.

8. TABLES

Data collection statistics (table of POPPY cases)

| Country of Origin | Basis of Claim | Initial Decision | Appeal Outcome | Post-Appeal Outcome | Status Granted/Final Decision |
|-------------------|------------------------------|-------------------------|---------------------------------|-----------------------------|-------------------------------|
| Albania | PSG | Undecided | N/A | N/A | N/A |
| Albania | PSG | Refused | Granted | N/A | Refugee status |
| Albania | PSG | Refused | Awaiting hearing | N/A | ONG |
| Albania | PSG | Undecided | N/A | N/A | N/A |
| Cameroon | PSG (FGM and trafficking) | Refused | Granted | N/A | Refugee status |
| Cameroon | PSG (FGM and trafficking) | N/A (Dublin Convention) | N/A | Dublin Convention | N/A |
| Chad | PSG Articles 3 and 8 of ECHR | Undecided | N/A | N/A | N/A |
| Guinea | Political Opinion | Refused | Granted | N/A | Refugee status |
| Moldova | N/K | Undecided | N/A | N/A | N/A |
| Moldova | PSG | Refused | Awaiting appeal decision | N/A | ONG |
| Nigeria | PSG | Refused | Granted | N/A | Refugee status |
| Nigeria | PSG | Refused | Granted refugee status | Home Office reconsideration | N/A |
| Nigeria | PSG | Undecided | N/A | N/A | N/A |
| Nigeria | PSG | Refused | Granted | N/A | Refugee status |
| Nigeria | N/K | Undecided | N/A | N/A | N/A |
| Russia | N/K | Undecided | N/A | N/A | N/A |
| Senegal | N/K | Undecided | N/A | N/A | N/A |
| Sierra Leone | N/K | N/A (Dublin Convention) | N/A | JR Dublin Convention | N/A |
| Thailand | PSG | Refused | Granted | N/A | Refugee status |
| Thailand | PSG | Refused | Granted Humanitarian Protection | Home Office reconsideration | ONG |

| | | | | | |
|---------|-------------------|-----------|-------------------------|-------------------------|-----|
| Uganda | Political Opinion | Refused | Refused | Reconsideration granted | N/A |
| Uganda | PSG | Undecided | N/A | N/A | N/A |
| Ukraine | PSG | Abandoned | N/A | N/A | N/A |
| Ukraine | PSG (DV) | Refused | Awaiting appeal hearing | N/A | ONG |
| Vietnam | PSG | Abandoned | N/A | N/A | N/A |

Key

| | |
|------|-------------------------------------|
| DV | Domestic violence |
| ECHR | European Convention on Human Rights |
| FGM | Female Genital Mutilation |
| JR | Judicial review |
| LR | Leave to remain |
| N/A | Not applicable |
| N/K | Not known |
| ONG | Ongoing |
| PSG | Particular Social Group |

APPENDIX A. METHODOLOGY

This report provides a snapshot analysis of 25 POPPY service users who claimed asylum under the NAM between January 2007 and January 2008. A total of 34 women who received support from the POPPY Project had in fact claimed asylum under the NAM during this period but nine cases were not included in the research sample due to the support offered being extremely brief (predominantly by the POPPY Outreach Service) and therefore the majority of information relating to the asylum claim was unavailable.

The POPPY Project is the only Government-funded organisation providing support to trafficked women in the UK and it has a limited number of places to support women who have been trafficked⁵². Since March 2003, the POPPY Project has received 925 referrals but has been able to accommodate 189 women only and provide outreach support to a further 148⁵³. As the POPPY Project is a small organisation, the number of women supported in relation to the number of women who have been trafficked to the UK remains low. This research does not claim to represent all women who have been trafficked into the UK and processed under the NAM system, but aims to provide an insight into the circumstances of 25 POPPY service users.

In order to examine the process and implications of NAM with regard to POPPY Project service users, a 12-month timeframe was established with a clear start and cut-off date (1 January 2007 to 1 January 2008)⁵⁴. This timeframe reflects when applications from POPPY service users were first processed under the NAM. The individual files of existing POPPY Project service users who claimed asylum during this timeframe were all selected and formed the basis of this sample. In total, 25 women's files were selected for data analysis. All women had been trafficked to the UK and had claimed asylum between January 2007 and January 2008. Of the 25 files selected, 14 women also participated in a structured interview with their POPPY senior support worker. The 14 women selected for the structured interviews were recommended by their senior support worker and chosen in relation to their availability and willingness to participate.

The sample for this research was comprised of women who were referred to the POPPY Project at various stages of their asylum application. Of the 25 files selected, 12 women were referred to the POPPY Project before they claimed asylum; 11 were referred to the POPPY Project after their screening interview but before their substantive interview; and in two cases this information is not known as it was not included in the case file⁵⁵.

The research process

This project included a range of quantitative and qualitative methodological approaches including:

- Data analysis of women's individual case files
- Structured interviews with women
- Focus groups with POPPY Project senior support workers.

The quotations from POPPY service users and senior support workers which have been used throughout the report come from the structured interviews and focus group discussions respectively. Using a range of methodological approaches ensured various aspects of the NAM procedural changes and implications for trafficked women were addressed and analysed.

Data analysis of POPPY case files

The data analysis of 25 women's individual case files involved:

- Extracting specific information regarding the NAM process and case outcomes and entering it onto a database. This information included noting key dates (especially the length of time from application to decision), UKBA Case Owner details and any changes during the asylum

⁵²The POPPY Accommodation and Support Service has 35 bed spaces available at any one time. The POPPY Outreach Service varies as to the number of women it can support, but as there are only four POPPY outreach workers this is also limited, and the service is frequently at capacity.

⁵³ POPPY cumulative statistics from March 2003 to March 2008.

⁵⁴ POPPY service users have been processed under the NAM since January 2007 pre-dating the introduction of NAM for all new asylum claims on 5th March 2007.

⁵⁵ In both these cases, women were supported by the Outreach Service and so limited information was available on file.

application.

- Analysing Home Office Reasons For Refusal letters, charting reasons and grounds for refusal, analysing appeal determinations of the Asylum and Immigration Tribunal and noting key rulings and decisions, with a specific focus on six of the 11 cases which had gone through the initial decision and appeal stage and for which both sets of documents were available.

The data analysis of the individual women's case files provided an overview of the NAM process and decision-making in relation to the sample. The data analysis verified to what extent procedural changes occurred and whether this affected the decision-making. The data analysis of six of the 11 cases which had gone through the initial decision and appeal stages also enabled comparative assessments to be made between initial and appeal decisions and to record reasons provided. Six cases only were used for this, since it was not possible to obtain full sets of papers for the other five cases.

Structured interviews with service users

In order to ascertain women's direct views and understanding of the NAM process, structured interviews were conducted with 14 service users. The interviews consisted of a POPPY senior support worker discussing a closed questionnaire with their service user (see Appendix C for full questionnaire).

Based on the POPPY Project's experience of working with trafficked women, it was felt that conducting the structured interviews with assigned support workers would be the most suitable approach for the service users. Women who have been trafficked have particular vulnerabilities and trauma based on their experiences. Many of the women selected were also still going through the asylum process or had been refused and were awaiting further appeals. The insecurity of going through the asylum process and confusion over the asylum determination can further enhance a woman's stress; therefore, a questionnaire was developed with closed questions that were not considered too intrusive or likely to cause additional harm and stress. All women were informed that participating in the interview was not compulsory and was their decision. Due to the emotional distress and their particular circumstances some women chose not to participate in the structured interviews.

Focus groups with POPPY support workers

Focus groups were facilitated with POPPY senior support workers to generate specific information about working within the NAM process and to discuss changes and implications. In order to draw on particular experiences, focus group participants were selected based on their familiarity of working with service users before and after the NAM was introduced.

Two separate focus groups were held, one with five senior support workers from the POPPY Accommodation and Support Service and the other with five POPPY Outreach Service workers. During the focus group a 'discussion line' was used to encourage group dialogue. Participants were asked to read a number of statements and mark on the 'discussion line' whether they agreed or disagreed with the statement and then discuss their reasoning (for statements see Appendix D).

The focus groups provided additional insights into the professional implications of the NAM process and how the changes are working in practice.

Ethical considerations

Ethical issues are a key component of any research project, especially that which works with vulnerable and psychologically traumatised women. Key steps were taken to ensure the project worked within ethical principles, including:

- Minimising harm and stress for all participants, especially during structured interviews with clients, by asking known support workers to work closely with the service users to complete the interview.
- Ensuring information and details participants gave remain confidential.
- Ensuring participants' names and personal identifying features remain anonymous – therefore, arbitrary initials instead of names have been used throughout this report.
- Respecting individuals' right to privacy throughout the research process.
- Ensuring all participants gave their informed consent to be involved in the research project.

Limitations

This research does not claim to represent all trafficked women going through the NAM process. The research provides a snapshot of POPPY Project service users going through the NAM process, to allow reflections of changes within the NAM and to ascertain its impact.

The limitations this project experienced included issues regarding the identification of the sample and information available. The cases of women who have been trafficked and who claim asylum on these grounds are invariably extremely complex. Some of the 25 cases selected were extremely complex and therefore not all information required for thorough data analysis was available on all case files. This was primarily due to frequent changes in legal representatives, or clients being referred to the POPPY Project after their asylum claim had been submitted. In addition, two of the 25 women have since left the POPPY Project; one woman has absconded and there is no known information on her whereabouts and the other voluntarily returned to her country of origin. As much information as is known about their cases has still been incorporated into the final findings within this report.

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APPENDIX C. POPPY SERVICE USER INTERVIEW OUTLINE⁵⁶

Case Owner

- Q1 Have you met your Case Owner?
- Q2 Do you know the name of your Case Owner?
- Q3 Do you have their contact details in writing?
- Q4 Have you ever wanted to contact them?
- Q5 If yes, were you able to do so?
- Q6 If no, how many times have you tried unsuccessfully to contact your Case Owner?
- Q7 Have you always seen your Case Owner?
- Q8 Who else have you seen and what happened when you saw them?
- Q9 What happened the first time you met your Case Owner?

Detention

- Q10 Have you been detained previously in the fast track system?
- Q11 If yes, did you receive treatment in detention?

Speed of process

- Q12 Were you able to gather all the information you needed to present your claim?
- Q13 Did you feel you were able to adequately present your case to the Home Office?
- Q14 Did you feel you had enough time?

Flexibility

- Q15 Have you or your solicitor asked for more time to prepare your case?
- Q16 If yes, do you know what for?
- Q17 Was more time allowed?
- Q18 Have you asked for flexibility for any other reason?
- Q19 Were you interviewed by someone of the same sex?
- Q20 Did you ask for this?
- Q21 If yes, was this arranged?

Treatment of vulnerable clients

- Q22 Do you have problems with your health?
- Q23 Were you able to discuss them with anyone before your interview?

Reporting

- Q24 Do you have to report?
- Q25 How often? (weekly/monthly/not at all)
- Q26 How do you travel there? (walk/bus/train/other)
- Q27 How long does the whole reporting process take you (including travel both ways, waiting time etc)? (1-2 hours/2-3 hours/3-4 hours/over 4 hours)

End of process

- Q28 Have you received a final decision on your case?
- Q29 Do you know what will happen next?
- Q30 Is there anything else you would like to add about your experience of the NAM process?

APPENDIX D. POPPY SUPPORT WORKER FOCUS GROUP DISCUSSION POINTS

Statements discussed⁵⁷:

- For the first time there is one individual who is familiar with the whole case and who is able to explain what is happening with it
- Service users and their representatives are able to contact the Case Owner to obtain information about progress with any element of an asylum seeker's case
- Case Owners have sufficient authority to exercise flexibility to discuss the timing of the process with an asylum seeker's representative and make arrangements where required to ensure that a case can be fully presented
- Service users feel overloaded by the amount of information they have to take in, combined with the number of things happening to them in the space of a few days. As a result, they are often confused about their situation and seem to be disengaged with the asylum seeker process. This hinders the ability of the Case Owner to properly investigate an application for asylum
- Appointments have been made by the NAM routing team for a first reporting event without checking that the Case Owner and the interpreter will actually be free to see the person
- There have been problems with people travelling to report
- Under the NAM the asylum decisions in non-fast track cases are generally served within 30 working days
- Women are released from detained fast track following assessment by POPPY support workers
- Many cases are being fast tracked with decisions in 11 days; such a short timescale leads to problems
- Many asylum seekers will have been through a traumatic experience and need respite before they can properly provide the information and details about their experiences that the Case Owner needs to make a correct decision about their claim for asylum
- All women asylum seekers should be offered an interview with a female Case Owner and interpreter
- Women find it difficult to disclose particularly sensitive elements of their asylum claims in the short timescales provided
- NAM must be judged according to whether or not it provides protection for refugees fleeing persecution rather than by how fast it processes cases and increases removals

56. Participants were given the option to answer 'yes', 'no', or 'don't know' in response to the questions, unless alternative options are set out below.

57. These statements were adapted from the following publication: Refugee Council briefing on The New Asylum Model, August 2007, available from: <http://www.refugeecouncil.org.uk/NR/rdonlyres/BAD3EAD5-5267-4038-9B16-E99362400DCD/0/Newasylummodel.pdf> [Accessed on 29th May 2008]

APPENDIX E. TRAINING OBJECTIVES FOR CASE OWNER TEAMS

POPPY Project training objectives for central London Case Owner teams, July/ August 2007

- 1 Case Owners will gain an overall understanding of what 'trafficking in human beings' means.
- 2 The training will predominantly focus on trafficking for sexual exploitation, rather than for forced labour. It will focus on the trafficking of women and girls, rather than men.
- 3 Awareness will be raised as to how trafficking affects victims.
- 4 The complex issues relating to credibility when assessing victims of trafficking will be addressed.
- 5 An understanding will be reached as to how Home Office Gender Guidelines apply to victims of trafficking and what this means in practice.
- 6 Case Owners will develop an understanding of how to identify a victim of trafficking, by using appropriate questions and a sensitive approach.
- 7 How to work with the POPPY Project, including the project's referral criteria, will be explained.
- 8 An understanding will be reached as to what the Council of Europe Convention on Action Against Trafficking in Human Beings means, and what plans there are for implementing the Convention.

APPENDIX F. ABOUT ASYLUM AID AND EAVES HOUSING

Asylum Aid

Asylum Aid is an independent, national charity working to secure protection for people seeking refuge in the UK from persecution and human rights abuses abroad. We provide free legal advice and representation to the most vulnerable and excluded asylum seekers, and lobby and campaign for an asylum system based on inviolable human rights principles. The Refugee Women's Resource Project (RWRP) at Asylum Aid strives to obtain protection, respect and security for women seeking asylum in the UK by providing specialist advice, research and campaigning on asylum issues for women. Asylum Aid was runner-up in the Liberty and Justice Human Rights Awards 2007.
www.asylumaid.org.uk

Eaves Housing

Eaves is a London-based charity which provides high quality housing and support to vulnerable, homeless women – including those trafficked into prostitution (through the POPPY Project) and those who have experienced domestic violence. Eaves also carries out research, advocacy and campaigning to prevent all forms of violence against women.

The POPPY Project Accommodation & Support

The POPPY Project provides accommodation and support to women trafficked into the UK for the purposes of sexual exploitation. It is the only specialist service in the UK – and the only Government-funded service – for women trafficked into prostitution. It has 35 bed spaces and an outreach team which works with women still involved in the sex industry. It also offers resettlement support for women moving on from POPPY accommodation.

The POPPY Project Research & Development

POPPY Research and Development is a centre of excellence for research, education and training on issues relating to trafficking of women for sexual exploitation and women wishing to exit prostitution. Its unique position of conducting research about trafficking, alongside providing support and accommodation for women who have been trafficked, results in detailed and informed analysis that helps to shape public policy around prostitution and trafficking.

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