**National Referral Mechanism and Section 45 Defence - Flowchart**

**The Referral**

A referral to the **National Referral Mechanism (NRM) should be made** whenever a child is suspected to have been a victim of modern slavery. **Trafficking** is a form of modern slavery. This can include:

* Sexual exploitation
* Criminal exploitation
* Forced labour
* Domestic servitude
* Organ harvesting

A **child does not need to consent** to a referral into the NRM. The Modern Slavery Act 2015 places **a duty on all ‘first responders’ to refer children who may have been trafficked into the NRM** – regardless of consent. It is good practice to tell the child and family where appropriate, but you still have a duty as a first responder to make the referral for a child, regardless of consent.

While **in some cases the Modern Slavery Act can provide a statutory defence to criminal charges** (more below), **the child does not have to have been arrested or charged with an offence themselves before an NRM is completed**. NRM referrals should be made as soon as trafficking of the child is suspected.

The NRM referral is now **completed on an online portal**: <https://www.modernslavery.gov.uk/start>

The referral will be sent to the Single Competent Authority (NRM decision maker) and a confirmation email will be sent to the referrer.

This **email will contain the NRM reference number for the child – this is important and needs to be recorded on case records**.

**The purpose of the NRM is to evidence the trafficking / modern slavery of the child**, and a Positive NRM decision means that they are officially recognised by the Single Competent Authority (Government) as being a victim of trafficking / modern slavery.

This is **important as it can come with a number of benefits and protections**:

(temporary immigration status for non-British nationals, safe accommodation for adults, potential defences to criminal prosecutions for adults and children)

The **NRM referral can be completed by social workers or any other local authority employee** – police officers – Home Office employees – and a number of third sector organisations.

If you are a social worker working with a child and an **NRM has been completed by another professional, make sure you get a copy of the NRM referral** and the confirmation email from the original referrer, **and inform the Single Competent Authority that you are also working with the child** and will have information to share.

It is **crucial to complete a good NRM referral**, as there is no appeal process for negative NRM decisions, which can have negative impacts for the victim.

A **good NRM referral** will:

* Be clear about **why you suspect the child has been a victim of trafficking** / modern slavery;
* Include **all relevant information and the source of this information** (what did the child say? What other information do you have? What are the circumstances? Are there perpetrators who have been identified?)
* Assess the circumstances the child was found in against what the child has said; **a child may deny being trafficked due to fear or not understanding**, but if the other evidence suggests they have been trafficked, explain what this is and why you suspect trafficking;
* **If the child has been charged with an offence, include this in the NRM referral and set out any evidence that may suggest the child was under threat or coercion** to commit the offence – this is important if the Modern Slavery Act is to be used as a defence later on;
* Make reference to the **ACT, MEANS and PURPOSE** of the trafficking. For example – ‘ACT – the child was moved from her home to a hotel to meet with males who then sexually assaulted her; MEANS – the child was told to get in a taxi and go to a hotel by an adult male who had befriended her online; PURPOSE – sexual exploitation of a child’

**The Decision**

Following the NRM referral and the receipt of the confirmation email, the Single Competent Authority will make the **First Decision** on the NRM – **the Reasonable Grounds Decision.** This will be either a positive or negative decision.

A **negative reasonable grounds decision** means that based on the information available, the Single Competent Authority (SCA) **does not suspect that the child has been a victim** of traffickingor modern slavery. No further action will be taken by the SCA. However, if there is new information in the future another NRM referral can be made.

A **positive reasonable grounds decision** means that the SCA **‘suspects but cannot prove’ that the child has been trafficked**. The referrer will receive an email confirming this and explaining the support available for the Potential Victim while awaiting the second decision – the Conclusive Grounds Decision.

A **Positive** **Reasonable Grounds Decision does not mean that the SCA has decided the child has been trafficked**. It only means that there is enough information to suspect trafficking.

It is **crucial to continue to email the SCA** by responding to the decision email and using the NRM reference number**, whenever there is new information relevant to the child being trafficked and exploited** (eg, new missing episodes, disclosures made, arrests made etc).

This is because the second decision (Conclusive Grounds) will depend on all available information – so crucial **information needs to be shared with the SCA to give the best possible chance of a positive decision.**

The **Conclusive Grounds Decision** will then be made once the Single Competent Authority has the information available. The guidance suggests this should be within 45 days of the Reasonable Grounds Decision, but in practice this often takes a lot longer.

A **Negative Conclusive Grounds Decision** means that the SCA, on the balance of probabilities, **does not believe the child has been a victim** of trafficking or modern slavery. There is no appeal process against this decision (although it can in theory be challenged by a solicitor under Judicial Review, if there are grounds to do so).

A **Positive Conclusive Grounds Decision** means that the SCA has decided that, on the balance of probability, **the child has been a victim of trafficking / modern slavery**.

It is **crucial that the decision is recorded** on the child’s records, **and shared with other relevant professionals – especially the child’s solicitor, the CPS and the police** if there are ongoing criminal proceedings.

The child and family should also be informed of the decision made.

**The Section 45 Defence**

**Section 45** of the Modern Slavery Act 2015 **can**, in some cases, **provide a defence to criminal charges against a child, or lead to the CPS dropping criminal charges**.

This is **where the offence committed has happened as a direct consequence of the child being trafficked** (eg coerced into county lines activity).

This **does not apply to some of the most serious** **offences**, known as Schedule 4 Offences, such as some violent offences, sexual offences or terrorism offences (although could be evidence of mitigating factors for sentencing).

**If a child has been charged with an offence and you suspect that they may have committed the act as a result of being trafficked**, it is crucial that you **refer the child into the NRM** immediately (see Referral section above).

You must also **notify the police, CPS and the child’s solicitor that the NRM referral has been made.**

The **child’s solicitor can then ask for the plea hearing to be deferred** on the basis that there is a possibility of a Section 45 Defence, and if there is a Positive Reasonable Grounds Decision in place under the NRM, this will usually be considered by the court.

The **solicitor should apply for an adjournment of criminal proceedings for further investigation into the defendant’s possible status as a victim** of slavery or trafficking.

**If criminal proceedings are adjourned**, you should **notify the SCA** by email of this, and **tell them the date of the next scheduled court hearing, stressing that a Conclusive Grounds Decision should be made** prior to this date.

Where the possibility of a Section 45 Defence has been raised, **the child’s solicitor should discuss this with the child. It is possible that if the child relies on this as a defence, they could be asked to give testimony in court** – if so, special measures should be taken (eg, they **should not be made to testify in front of co-defendants who may have trafficked them**).

The **CPS is also duty bound to consider that the child may have been a victim of trafficking, and if so, whether or not they should drop the charges**. The CPS Guidance on this says that **charges should be dropped if**:

* There is reason to believe the child is a victim of trafficking or modern slavery **AND**
* There is clear evidence of a defence under Section 45 Modern Slavery Act **OR**
* It is not in the public interest to prosecute the child

Specifically for children, the guidance states that:

“**A person is not guilty** of an offence if -

**The person is under the age of 18 when the person does the act** which constitutes the offence,

The **person does that act as a direct consequence of the person being, or having been, a victim of slavery or a victim of relevant exploitation**, and

A reasonable person in the same situation and having the person's relevant characteristics would do that act.”

**If the CPS still decide to prosecute** with a Conclusive Grounds NRM, this **may be because they do not believe that the crime was committed as a direct result of the exploitation** (eg, someone may have been trafficked and exploited, but may also have committed a crime – the offence is not necessarily a result of the trafficking in every case or every offence).

**If this happens**, and the child relies in the Section 45 Defence then **the court (judge / jury) will make a decision**, based on the evidence, as to whether or not the child is guilty of the offence once all evidence is heard.

**A Positive Conclusive Grounds Decision on the NRM shows that the child has been trafficked, but the full decision letter is important** here, as it will show the grounds on which the child has been accepted as a victim of trafficking. **If this is not linked to the offence being heard in court, then the defence will likely be weaker**.

**If the court accepts that the child committed the act as a direct result of being trafficked, and a reasonable person would have done the same, then they should not be found guilty** or sentenced.

In Birmingham, if a child receives a Positive Reasonable Grounds NRM Decision, or you want advice on completing the NRM, you should also make a referral to the Independent Child Trafficking Guardian Service - <https://www.barnardos.org.uk/what-we-do/services/ictg-west-midlands>

The CPS guidance is here - <https://www.cps.gov.uk/legal-guidance/human-trafficking-smuggling-and-slavery>

The Modern Slavery Act Guidance is here - <https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims>

Schedule 4 Offences are here - <https://www.legislation.gov.uk/ukpga/2015/30/schedule/4/enacted>